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SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 4th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 1 August 2001, at 10 a.m.

Chairperson: Mr. WEISSBRODT

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The meeting was called to order at 10 a.m.

ORGANIZATION OF WORK (item 1 of the provisional agenda) (continued)

1. The CHAIRPERSON informed the observers and other participants of the decisions regarding the organization of work adopted by the Sub-Commission in its closed meeting. They covered the establishment of working groups on transnational corporations and the administration of justice, the timetable for consideration of the agenda items, and the provisions for the conduct of business.

2. Mr. JOINET asked whether the final version of the agenda including the sub-items was available.

3. The CHAIRPERSON said that, following Mr. Joinet's useful comments on the first draft of the agenda complete with sub-items, a second version was being prepared and would be issued once it had been approved by the members of the Sub-Commission.

4. Mrs. DAES, noting that the members of the Sub-Commission were allowed to make one or more statements amounting to a total of not more than 10 minutes on each agenda item, proposed that they should be allowed instead to make two statements of 10 minutes each on individual items, particularly agenda item 2.

5. The CHAIRPERSON suggested that the members should hold informal consultations before the next meeting to ascertain whether there was sufficient support for that proposal.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (item 2 of the provisional agenda) (E/CN.4/Sub.2/2001/3 and Add.1-3; E/CN.4/Sub.2/2001/NGO/1, 4, 7, 8, 10, 12, 14 and 15)

6. Mr. ROSSI (International Association for Religious Freedom) said that he wished to draw the Sub-Commission's attention to human rights violations arising from religious extremism. All the major religions preached justice, freedom and peace, but erroneous religious traditions had evolved over time and, unfortunately, many of them were being strongly supported by the official representatives of religions and by States.

7. In India, the Christian and Muslim minorities were very concerned by manifestations of violence by Hindu extremists while, in Nepal, a mainly Hindu country, conversion to another religion was forbidden and punishable with prison. In Sri Lanka and Bhutan, extreme elements of Buddhism were prominent and, in the latter country, conversions were illegal. In certain European countries, where a majority practised Orthodox Christianity, the law limited or even denied the religious freedom of the non-Orthodox minorities.

8. In countries with a Muslim majority, extremists had imposed or were trying to impose shariah or Islamic law, which was highly discriminatory against women and against the religious freedom of non-Muslims and, above all, Muslims themselves, since it imposed the death penalty on those who renounced Islam. That extreme measure was in force in Saudi Arabia, Mauritania, the Sudan and Yemen. It should be recalled that the freedom to change one's religion was embodied in the Universal Declaration of Human Rights; it was thus not acceptable for Member States of the United Nations to adopt legislation that denied the right to life of men and women who merely exercised a universally recognized fundamental right. Furthermore, according to eminent Muslim jurists, the death penalty for apostasy was contrary to the teachings of the Koran and the practice of the Prophet.

9. A concerted effort was required to counteract the growth of such extremist movements, which not only threatened religious freedom but also the whole human rights system and world peace. To that end, it was necessary to acquire an in-depth knowledge of the authentic principles of the religions in question, so as to be able to counter the specious arguments used by such movements. Accordingly, the Sub-Commission should undertake a study on religious extremism, accepting the recommendation of the Special Rapporteur on freedom of religion or belief. That would be particularly appropriate since 2001 was the twentieth anniversary of the adoption of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

10. Mr. MADELIN (International Federation of Human Rights Leagues) said that violations of the rights of human rights defenders and restriction of their activities were regularly occurring in three of the republics of the former Soviet Union.

11. In Belarus, an international fact-finding mission had noted some serious obstacles to freedom of association, accompanied by direct repression of the activity of human rights defenders. For example, Yuri Bandazhevsky, who had publicized the harmful effects of the Chernobyl disaster and criticized the misuse of the Ministry of Health's budget, had been sentenced at a dubious trial to eight years' imprisonment. Also, with the approach of the 2001 presidential elections, there had been increased repression of the opposition and the independent media. It should not be forgotten that the death penalty was still in force in Belarus.

12. In Kyrgyzstan, systematic harassment of human rights defenders, members of the political opposition and the independent media had increased. Following the 2000 presidential elections, the principal members of the opposition had been detained; several independent newspapers had been banned and their journalists threatened and, recently, one of the offices of the Kyrgyz Committee for Human Rights had been closed and property from other offices had been confiscated, while two of the Committee's senior officials had gone into exile after warrants for their arrest had been issued.

13. In Uzbekistan, Shovruk Ruzimuradov, President of the Kashkadar regional office of the national human rights organization of that country had recently died in prison, almost certainly as a result of torture.

14. In Egypt, the legislative system significantly restricted the activities of human rights defenders, by penalizing access to external financing; several members of the national human

rights organization had been detained in that connection. In Tunisia, Judge Mokhtar Yahyaoui had been suspended because he had complained that judges were obliged to deliver verdicts dictated by the executive power. In addition, over a thousand prisoners of conscience were detained in inhuman and degrading conditions in prisons where torture was usual and carried out with impunity.

15. In Brazil, the social movements, particularly the organizations of the landless, were consistently repressed and there had been numerous cases of torture and assassinations; in Guatemala there had been a worrying increase in the number of attacks suffered by human rights defenders.

16. Ms. ALA'I (Baha'i International Community) said that the situation of the Baha'is in Egypt had degenerated over the last year. Her organization would have preferred to resolve the problems directly with the relevant government authorities but, since discussions over a number of years had failed to resolve the situation, it had opted to bring the issue of the human rights abuses facing the Baha'is in that country to the attention of the international community.

17. The Baha'i community had coexisted peacefully with other religious communities in Egypt since 1868 but, in 1960, the Egyptian authorities had revoked the recognition of the Baha'i faith and banned the community's activities. Then, at the last session of the United Nations Commission on Human Rights, the representative of Egypt had accused the Baha'is of extremism and of attacking Islam and, in January 2001, nine Baha'is had been imprisoned merely on account of their religious beliefs.

18. The Baha'is were not seeking any special privileges from the Egyptian Government; they merely wanted their basic human rights and the right to practise their religion. Members were not allowed to register their marriages and, thus, to obtain birth certificates for their children; evidently, that prejudiced them as regards family allowances, pensions, inheritance, divorce, alimony and child custody.

19. The Baha'i International Community consequently asked the Sub-Commission to call on the Government of Egypt to repeal the 1960 Presidential Decree dissolving the Baha'i institutions and outlawing their activities; to release the nine Baha'is who had been arbitrarily arrested in Sohag; to ensure that Baha'i marriages could be registered; to grant the Baha'is the same treatment as other religious minorities in matters concerning identity, birth and official documentation; and to direct the government-controlled media to cease disseminating incorrect information designed to stir up hatred against the Baha'is.

20. Mr. KAMAROTOS (Médecins du Monde) said that his organization had recent, reliable information that serious human rights violations continued to be perpetrated in Chechnya, including indiscriminate attacks on civilians, mass arrests, torture and cruel and inhuman treatment. Various "cleansing operations" of a punitive nature had taken place during June and July in different parts of the country; witnesses had spoken of mass arrests, torture, rape, plunder and large-scale destruction of housing.

21. The Russian Federation appeared to be completely ignoring Commission on Human Rights resolution 2001/24 and, on the contrary, was increasing the serious and systematic human

rights violations perpetrated by Russian troops in Chechnya. As a result, numerous civilians had crossed the frontier into the neighbouring republic of Ingushetia, where about 200,000 Chechens had taken refuge. Far from encouraging an eventual return, the situation was provoking fresh waves of refugees, who would soon have to face another arduous winter in camps. The official Chechen administration had been exerting pressure on refugees whose homes had been destroyed to return, but his organization considered that such pressure was extremely dangerous as long as no adequate conditions were in place to ensure them a safe return and reception.

22. The Commission's latest resolution called on the Government of the Russian Federation to allow humanitarian organizations to enter Chechnya freely and to facilitate their activities by simplifying the regulations; however, recent events appeared to indicate that the opposite was occurring.

23. His organization had set up an emergency programme in Palestine as a result of the latest events there. It was aimed, above all, at supporting the hospitals and rehabilitation centres that receive persons wounded in encounters. Following the latest increase in violence, it hoped to play a role in protecting the civilian population and ensuring respect for the provisions of the Fourth Geneva Convention regarding medical services and the evacuation of the wounded.

24. With the closure of the border posts, numerous regions, particularly the rural areas in which 70 per cent of the Palestinian population lived, were isolated without any access to health services and that had resulted in a number of deaths. Also, the obstacles to the freedom of movement of Palestinian hospital personnel as a result of the cordoning off of areas by the Israeli military authorities had greatly contributed to the disorganization of the health services and his organization urged respect for the principle of the neutrality of medical services and the protection of civilian populations, particularly those who were sick or wounded, as established in articles 16 and 17 of the Fourth Geneva Convention.

25. Mr. AHMAD (World Muslim Congress) said that his organization wished to draw attention to two human rights situations studiously ignored by the world's leaders. Both involved State-sponsored brutality against civilians. In the Republic of Chechnya, Chechen civilians were being arbitrarily detained, systematically tortured and summarily executed, as evidenced, inter alia, by the discovery of mass graves. Similar atrocities perpetrated in the Balkans and Africa would no doubt receive the prompt attention of war crimes tribunals.

26. In the Indian-occupied State of Jammu and Kashmir, the summary execution of detainees was a tool for keeping the Kashmiri population under forced subjugation. The barbaric treatment of Kashmiri civilians by Indian occupying forces included the destruction of settlements, rape and enforced disappearances. The Association of Parents of Disappeared Persons had recently laid the foundations for a memorial in Srinagar to the "disappeared". Following a recent visit to the occupied State by an independent fact-finding committee from India, local people in the mountain villages of Doda tehsil had been tortured by an Indian regiment to punish them for having given an account of their sufferings. All action taken by the Kashmiri people to further their right to liberation from Indian occupation was legitimate, and self-determination was a prerequisite for peace.

27. Mr. OZDEN (Europe - Third World Centre (CETIM)) said that, grave violations of human rights continued to be widespread in Turkey, as evidenced in the past few months by: the arrest of 300 workers protesting against new legislation to prohibit the right to strike; the re-imprisonment of the Turkish academic Fikret Baskaya for publishing an article criticizing the Government's approach to the Kurdish question; the prohibition of a book on the history of Kurdistan on the grounds that it was propaganda; the arbitrary arrest of more than 120 members and sympathisers of a pro-Kurdish party in Ankara, Içel and Aydin; the hundreds of allegations of torture recorded since the beginning of the year in the province of Diyarbakir alone; and the use of solitary confinement in prisons which had provoked a massive hunger strike.

28. The Sub-Commission should urge the Turkish authorities to end that inhuman treatment and establish an independent inquiry into the deaths of prisoners occasioned by the repeated interventions in the prisons of State security forces since 1985.

29. Ms. PARKER (International Educational Development, Inc.) said it was regrettable that the recent summit between the Heads of State of Pakistan and India had not resulted in a clear commitment to a timetable for the implementation of a United Nations plebiscite in Jammu and Kashmir. The failure to implement that plebiscite lay at the root of the 11-year crisis in the region. The violations of humanitarian law by Indian occupying forces were among the most serious of any of the world's conflicts, as many non-governmental organizations (NGOs) had testified. The Sub-Commission could usefully contribute to a resolution of the conflict by: condemning those violations; urging the Security Council to pursue the implementation of its resolutions regarding the plebiscite more aggressively; emphasizing the central role of the Kashmiri people in deciding their own fate; and promoting international mediation as a means to settle the Kashmir question.

30. Such mediation might also help to resolve the serious situation in the Moluccas, which had been occasioned in 1950 by the invasion of Javanese military forces in violation of the Round-Table Conference Agreements. It was imperative in that connection that the new Government of Indonesia be made aware of the concerns of the international community regarding violations of human rights and humanitarian law in the Moluccas and other areas seeking to exercise their rights under decolonization instruments.

31. Mr. SAFI (International Islamic Federation of Student Organizations) said that the situation in Indian-occupied Jammu and Kashmir differed from the situation in the occupied Palestinian territories in one respect only: the latter was in the international spotlight while the former went unmonitored due to the Indian Government's ban on the international media.

32. In both territories, the occupying Powers - Israel and India - maintained their illegal occupation against the wishes of the people in defiance of Security Council resolutions, circumvented negotiations with the representatives of the occupied populations and used disproportionate force to suppress their legitimate political aspirations. While Israel used "security concerns" to justify its use of brutal force against the Palestinian people, India stigmatized the Kashmiri people as "separatists" and "terrorists". Both had strongly opposed international monitoring mechanisms or presence on the ground and used collective punishments, curfews and closures to dissipate movements for self-determination.

33. The situation in Jammu and Kashmir was characterized by grave violations of human rights, yet no independent fact-finding missions had been permitted to evaluate the situation there. Moreover, no Kashmiri leaders had been allowed to participate in the Agra Summit between the Heads of State of India and Pakistan. While his organization welcomed the apparent reconciliation of the two countries, it strongly condemned the unabated campaign of violence waged against the Kashmiri people by the Indian occupying forces. It urged the Sub-Commission to call upon the Government of India to cease the carnage immediately, withdraw its 700,000 occupying troops from Jammu and Kashmir and allow Kashmiri representatives to participate in trilateral negotiations with India and Pakistan.

34. Mr. MASOOD (International Human Rights Association of American Minorities) said that the Sub-Commission was well aware of the grave situation in Jammu and Kashmir, which had been the cause of untold sufferings for millions of Kashmiri people. The international community had failed to promote the implementation of relevant United Nations resolutions, thus appearing not to recognize the untenability of India's claim on the territory. The Kashmiri people had always rejected the idea of being a part of India.

35. India had taken advantage of the passivity of the international community to massacre with impunity more than 70,000 Kashmiri men, women and children. Thousands of women had been dishonoured, young men "disappeared", communities were searched at odd hours and most Kashmiris ended up in illegal detention centres where they were subjected to brutal force and torture. Moreover, Kashmiris were prevented from travelling abroad to speak of their sufferings. The sole purpose of the puppet regime was to assist the Government of India in its efforts to portray the entire Kashmiri people as terrorists. His organization urged the Sub-Commission to "break its silence" and to inscribe the situation of human rights in the Indian-occupied Kashmir on its agenda.

36. Mr. SHIOKAWA (International Association of Democratic Lawyers) said he wished to draw attention to the violations of the human rights of Japanese workers in the public and private sectors. Unfair working hours and infringements of the right to organize were of particular concern, as were widespread gender and age discrimination. Japanese legislation had been revised to extend the compulsory retirement age to 60 years and private enterprises had reacted by dramatically reducing wages for persons over the age of 55. In the banking sector, wages had been virtually halved.

37. Ms. HAMPSON said that it might be argued that, without the ability to pass resolutions, there was no value in the Sub-Commission continuing to consider the question of the violation of human rights and fundamental freedoms in all countries, particularly since it was not supposed to address situations being considered by the Commission. For her part, she could not support that position. Silence was the best friend of the States that systematically violated human rights. The Sub-Commission would be failing in its responsibility if it did not bring such situations to the attention of the Commission, even if the latter failed to take action.

38. She would refrain from addressing those situations on the agenda of the Commission except in regard to one case which must be addressed as a matter of urgency. The previous day, an Israeli attack had killed eight people in Nablus, including two children. If the Israeli authorities possessed evidence against the individuals targeted, they should proceed to a proper

trial. In addition to constituting an unlawful means of dealing with genuine suspects, the policy of "active defence" (clearly a euphemism for assassination) ran the obvious risk of killing people in error, including innocent civilians.

39. It was to be regretted that the Commission on Human Rights did not systematically include on its agenda all situations of ongoing conflict, given that they were often the occasion - or pretext - for the most widespread violation of human rights. She wished to draw attention to a number of forgotten conflicts: in Angola, both government forces and União Nacional para a Independência Total de Angola (UNITA) troops continued to inflict large-scale human rights violations on the civilian population; in Indonesia, despite tentative moves to investigate past violations in East Timor, extrajudicial killings, disappearances, torture and arbitrary detention continued in Aceh, Papua and elsewhere; in the Philippines, there were reports of indiscriminate bombing and human rights violations by armed forces in central Mindanao. There could be no military solution to the underlying difficulties. Instead, the conduct of the fighting parties was only hampering the search for a solution. What was needed was an effective system of accountability, and the effective and fair enforcement of domestic and international criminal law.

40. She drew attention to the deplorable conditions of detention affecting hundreds of thousands of people worldwide, which amounted to inhuman and degrading treatment. The European Court of Human Rights had found that inhuman conditions existed in a prison in Greece. Dirty, overcrowded cells were common throughout Russia and, in Brazil, similar problems were exacerbated by the systematic use of torture. Certain groups of detainees were often singled out for ill-treatment, which appeared to be the case with asylum-seekers and Roma in Europe. Part of the problem was an unwillingness to devote the necessary resources to improving conditions but, even more importantly, there appeared to be an unwillingness to bring to justice State agents responsible for human rights violations.

41. Many instances of extrajudicial executions, torture and arbitrary detention continued to escape the attention of the international community, either because the situation was not regarded as sufficiently serious or because the State in question was powerful enough to deflect scrutiny. She drew attention to the situations in Côte d'Ivoire, Liberia and Zanzibar (Tanzania), as well as to discrimination against Indo-Fijians in Fiji and Bhutanese refugees of Nepali origin. With regard to powerful States, criminal judicial procedures in Saudi Arabia, denied the most basic rights, such as the right to be defended by a lawyer. Despite the accession of Saudi Arabia to the Convention on the Elimination of Discrimination against Women, women still suffered from serious discrimination in fields such as education and freedom of movement. Similarly, although the People's Republic of China had signed the two International Covenants on Human Rights, its crackdown on fundamental freedoms had continued unabated. The right to freedom of expression and the right to a fair trial were frequently violated, particularly in respect of minority groups, such as the Uighurs in Xinjiang and the Tibetans.

42. She expressed concern about the need for accountability, with particular reference to Algeria, Guatemala, Mexico and Nepal. By failing to carry out effective investigations, State authorities acquiesced and might even become responsible for human rights violations. She welcomed the transfer of former President Milošević to the Hague to stand trial, since it sent a

clear message to others in his position that there could be no impunity for human rights violations. It was regrettable that the United States had decided to pull out of negotiations for a Protocol on the implementation of the Bacteriological Weapons Convention, for what appeared to be commercial reasons. Globalization had led to the increasing interdependence of communities, and required all States to put isolationism and unilateralism behind them.

43. Mr. ANTHONY (World Organization against Torture) said he wished to draw attention to violations of the right to freedom of expression and freedom of association in a number of countries. His organization, in conjunction with the International Federation for Human Rights, had devoted several studies in its report entitled "Human Rights Defenders on the Front Line", to the freedom of association, which was an essential condition for the effectiveness of NGO work.

44. Demonstrators and human rights defenders were being arbitrarily detained in Malaysia pursuant to the Internal Security Act, which was clearly inconsistent with international standards. Police had increasingly abused their extensive powers of arrest since April 2001, in a spiralling series of demonstrations, detentions and subsequent demonstrations. In Tunisia, the Government was reported to be using court decisions to impair the work of human rights defenders, as well as putting pressure on property owners to refuse to sign contracts with known activists. In Egypt, the Government had used a ban on funding from abroad to hamper the activity of human rights defenders. Several activists who had used foreign financial assistance to promote human rights had been arrested or imprisoned, including Mr. Saad Edin Ibrahim, director of the Ibn Khaldoun Centre for Developmental Studies, who had received a seven-year prison sentence. Human rights organizations in Guatemala were victims of an increasing number of attacks, many of which were planned in such a way as to suggest State involvement.

45. Ms. COLLINS (France Libertés) said that four Kurdish members of parliament had been in prison in Turkey for the past seven years for having expressed their opinions on the Kurdish question, namely: Ms. Leyla Zana, Mr. Selim Sadak, Mr. Hatip Diclé and Mr. Orhan Dogan. Their alleged membership of an armed group had never been proved, and human rights organizations had denounced the court concerned as not being independent or impartial. Although the European Court of Human Rights had found Turkey guilty of violating article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the right to a fair trial, it had failed to reach a verdict on articles 10, 11 and 14, which included the right to freedom of expression. Her organization urged the Sub-Commission to call on the Turkish Government to release the prisoners immediately, and to organize a retrial under fair and legitimate conditions.

46. Mr. DÍAZ DE JESÚS (International Indian Treaty Council) said that the previous Government of Mexico had declared publicly that it was under no obligation to comply with Sub-Commission resolution 1998/4, which called upon it to give priority to ending impunity for human rights violations affecting indigenous peoples. A year after the election of the new Government, those responsible for massacres in Chiapas and Guerrero had still not been brought to justice, and the families of the 500 disappeared persons were no closer to discovering the fate of their relatives.

47. In March 2001, the indigenous communities had made a clear demand for a new legal framework for indigenous peoples based on the San Andrés Agreements. Instead, Congress had proposed a bill that was inconsistent with many of the international legal instruments in force. The persecution of indigenous leaders attempting to prevent that bill from being adopted revealed that the Government was unwilling to renew dialogue and reconciliation. He urged the Sub-Commission to ask the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to pay special attention to the situation in Mexico. A formal petition, signed by 78 representatives of indigenous organizations from around the world taking part in the Working Group on Indigenous Populations, had already been submitted to him with that same request.

48. Mr. BARUA (Asian Buddhist Peace Conference) said that military police forces in Indian-occupied Kashmir continued to carry out human rights violations with impunity. A series of laws introduced by the Indian Government provided for arbitrary arrests and the torture of prisoners, while abuses by the armed forces also led to denial of the right to life. Recent talks with the Government of Pakistan had foundered due to the unwillingness of India to enter into a real dialogue, and up to 700,000 military personnel remained in the State. He urged the Sub-Commission to draw attention to all human rights violations, wherever in the world they might occur.

49. Mr. ARZUAGA (International League for the Rights and Liberation of Peoples) said that his organization followed closely the situation of peoples whose right to self-determination was being denied. The United States Navy had occupied two thirds of the island of Vieques, Puerto Rico, since 1935, for use in training. Recent tests showed that the repeated use of radioactive materials had caused untold damage to the local environment. A non-official referendum had recently indicated that 80 per cent of voters were in favour of an immediate withdrawal of United States forces from the island. Yet the United States Government had shown no sign of taking such massive opposition into account.

50. The plan to carry out a referendum in Western Sahara appeared to have been replaced by a new framework agreement with a more limited scope, which offered restricted autonomy similar to that already rejected by the Frente Polisario. The current situation was increasingly tense, and had led to the imposition of restrictions on the freedom of movement of Saharans. Representatives of the organization "Truth and Justice Forum" had been arbitrarily detained when attempting to travel to Geneva to participate in the fifty-seventh session of the Commission on Human Rights.

51. Mr. LEBLANC (Franciscans International), speaking also on behalf of Dominicans for Justice and Peace, the Justice and Peace Commission of the Major Superiors Leadership Conference of Pakistan and the Justice and Peace Commission of the Catholic Bishops Conference of Pakistan, said that serious violations of human rights were being committed in Pakistan. The Special Rapporteur of the Commission on Human Rights on the question of torture, had confirmed that torture was widespread and endemic in the country. Most cases of arbitrary detention and torture took place in the context of extreme political or religious conflicts.

52. Structural and institutional protection of human rights was weak, Pakistan not having ratified the International Covenants on Human Rights or other international instruments. Discriminatory and repressive laws had been enacted against religious minorities. The Blasphemy Laws carried the death penalty for violations.

53. In 2000, the regime had introduced a new local government structure that further discriminated against minorities. Although seats were reserved for women, in practice non-Muslim women were ineligible. Seats were reserved for Muslim peasants and labourers but not for those belonging to religious minorities. Furthermore, the new structure would maintain the feudal system by enabling landlords to exercise greater control.

54. His organization urged the Government of Pakistan to ensure greater accountability, transparency, good governance and respect for the rule of law and civil rights; to repeal all discriminatory legislation, including the Blasphemy Laws; to adopt policies designed to create a more modern, liberal and secular State; to ratify the international human rights treaties it had not yet ratified and to abide by the treaties it had ratified; and to invite the Special Rapporteur on religious intolerance to pay a second visit to Pakistan.

55. Mr. GLAVICH (American Association of Jurists) said that the United States of America was the key player in the current situation in the former Yugoslav Republic of Macedonia with the passive complicity of the major European Powers, which declined to assume responsibility for the preservation of peace, security and stability in Europe. The Albanian minority in Macedonia had legitimate grievances that should be addressed through political negotiations but the military attacks that were being conducted with impunity by the Kosovo Liberation Army (KLA) from neighbouring Kosovo were another matter altogether. It was beyond belief that the big Powers were unable to neutralize and disarm the aggressors and bring them to justice.

56. The United States was bent on controlling the oil deposits on the shores of the Black Sea and the Caspian and transporting the oil through a pipeline from the Bulgarian port of Burgas to the port of Vlone in Albania. One of the multinational companies involved in the project, Halliburton Energy (closely associated with the Vice-President of the United States), had built the monster Bondsteel military base in Kosovo. To ensure the success of its project, the United States was financing, arming and protecting the KLA and seeking by all means to prevent the legitimate Government of the former Yugoslav Republic of Macedonia from defending itself against aggression. For example, President Bush's national security adviser, Ms. Condoleeza Rice, had recently urged the President of Ukraine to halt arms sales to the Government.

57. It was high time that the European Union stopped behaving as a satellite of the United States and assumed full responsibility for peace, security and stability in Europe, first and foremost in the former Yugoslav Republic of Macedonia.

58. Mr. BENNET (Afro-Asian People's Solidarity Organization) said that the noble ideal of self-determination was being usurped by power-seekers who feared democratic elections. Armed groups seeking to create homogeneous enclaves based on religion or ethnicity had been responsible for horrific violations of human rights over the past decade.

59. Afghanistan under the Taliban had become a hotbed of terrorism, providing refuge to the most wanted terrorist of all, Osama bin Laden. Members of the Abu Sayyaf group in the Philippines and of a number of Pakistan-based terrorist organizations, all ostensibly freedom fighters, had been trained in Afghanistan. The groups concerned all expounded variations of a violent ideology developed in the madrasas of Pakistan.

60. The international community should make a determined effort to prevent States from allowing their territories to be used to train armed terrorists calling for holy war against democratic States.

61. Mr. MUMTAZ KHAN (International Institute for Peace) said that women in Afghanistan had been deprived of fundamental human rights, such as the right to employment, the right to education and the right to freedom of assembly, in the name of religion. The Taliban Government was also seeking to wipe out the non-Wahhabi religious sects.

62. The media in Pakistan were being targeted by both the Government and fundamentalist forces. Newspapers had been closed down on blasphemy charges. One editor who had dared to criticize government policy was under sentence of death. Teenagers were being indoctrinated in Pakistani madrasas and sent to Indian-held Kashmir in the name of holy war.

63. People in Pakistan-occupied Kashmir had been deprived of the right to vote and run for office in recent fraudulent elections in Pakistan-occupied Kashmir. The nomination papers of 32 pro-independence candidates from the All Parties National Alliance had been rejected. Over 200 political activists had been beaten and detained for protesting against the discriminatory election laws. Not a single daily newspaper was published in that part of Kashmir. The population of Gilgit-Baltistan (known in Pakistan as the Northern Areas) was subject to the direct rule of the central authorities in Islamabad and had not enjoyed any basic rights since 1947.

64. Mr. TAHIR (Pax Romana) said that 97 per cent of the population of Pakistan were Muslims. Members of minority religions such as Christians, Ahmadis and Hindus suffered severe social and religious discrimination. In some places non-Muslims were not allowed to use the same utensils or tables as Muslims and were refused service in barbers' shops. Discrimination in employment was also common. Under the separate electorate regime imposed by Zia ul-Haq in 1985, members of religious minorities could not vote for Muslim candidates or run against them in elections. That system had aggravated religious intolerance, leading to attacks on the property and places of worship of religious minorities, an increase in crime against women members of minorities and a growth in the number of prosecutions for blasphemy.

65. His organization recommended that the human rights of all citizens of Pakistan should be protected, without any discrimination based on caste or creed. The Constitution and legislation such as the blasphemy laws and the laws on evidence that discriminated against minorities were a source of communal disharmony and should be repealed forthwith. Action should be taken to promote religious heterogeneity and harmony and to end religious intolerance in the media.

66. The separate electorate regime was flawed and should be abolished. The recommendations of the 1997 Commission of Inquiry on Women should be implemented without delay. The Government should set up a permanent tribunal for religious and other minorities to hear complaints of human rights violations and provide appropriate remedies. Lastly, there was an acute need for an impartial commission of inquiry to look into the situation of religious minorities and make recommendations to the Government.

67. Mr. SYED (European Union for Public Relations) said that the rights of the people of Jammu and Kashmir State in India were being violated by external armed groups which engaged in large-scale killing, kidnapping and vandalism. The groups were armed and sponsored by a neighbouring country, where they were known as freedom fighters. They did not even spare pilgrims visiting a holy cave, 20 of whom had been killed. The irony was, however, that most of their victims were co-religionists who refused to fall in with their designs. He trusted that the Sub-Commission could tell the difference between a true liberation movement and a struggle for political ends under the mask of religion.

68. Mr. YUNIS (Observer for Iraq) said that the Governments of the United States of America and the United Kingdom had been committing gross violations of the human rights of the people of Iraq since 1991. They continued to impose economic sanctions on the country although Iraq had fulfilled its obligations under the relevant Security Council resolutions. The sanctions had claimed the lives of 1.5 million Iraqis, mainly women and children. They also imposed illegal "no-fly zones" in the north and south of the country.

69. The Secretary-General of the United Nations had stated in June 2001 at the special session of the General Assembly on HIV/AIDS that he did not support any of the relevant Security Council resolutions. Bombing raids were carried out almost daily on the pretext of protecting the "no-fly zones". Between December 1998 and July 2001, they had killed 339 people and wounded 1,029. The United States Congress had earmarked US$ 96 million for the recruitment of mercenaries in a desperate attempt to change the regime in Iraq.

70. Notwithstanding the difficult situation in the country, his Government was eager to ensure respect for human rights through dialogue, while shunning selective interpretations of such rights that distorted the principles set forth in the Charter of the United Nations and the Universal Declaration of Human Rights. In the light of those principles, it called on the international community, through the Sub-Commission, to condemn the abhorrent economic sanctions that were the source of such massive violations of the human rights of the Iraqi people and to call for an end to the ongoing military aggression.

71. Mr. Al-FAIHANI (Observer for Bahrain) said that the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance would provide the international community with a historic opportunity to reaffirm its determination to stamp out such practices, which constituted a crime against humanity, and to adopt an effective Programme of Action to that end.

72. Bahrain under its Amir, Sheikh Hamad bin Isa Al-Khalifa, gave high priority to respect for human rights as it sought to build a modern country that preserved its traditional values and distinctive cultural characteristics. A National Charter had been approved by 95.4 per cent of the

participants in a national referendum held in February 2001. It provided for the establishment of a popularly elected assembly, accorded women the right to vote and to stand for election, and laid the foundations for the separation of powers.

73. Bahrain attached great importance to freedom of expression and the media were playing a leading role in the development of a democratic society. The Amir had granted an amnesty to persons imprisoned for security-related offences and had allowed all persons who had been exiled to return home. The issue of citizenship had been addressed and the State Security Act had been repealed. A Higher Council of the Judiciary had been established to ensure judicial independence.

The meeting rose at 1 p.m.

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SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 5th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 1 August 2001, at 3 p.m.

Chairman: Mr. WEISSBRODT

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND RACIAL SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (continued)

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The meeting was called to order at 3.05 p.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND RACIAL SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (continued)

1. The CHAIRMAN first invited the members of the Sub-Commission to comment on the proposal by Ms. Daes that they should be allowed to take the floor on the agenda item for no more than 15 minutes, with the possibility of dividing their time between two statements if they so wished.

2. Mr. EIDE said he hoped that the Chair would display some flexibility with regard to the time limit for statements by members of the Sub-Commission, not only on item 2 but on other agenda items as well.

3. The CHAIRMAN invited the members of the Sub-Commission to adopt the proposal by Ms. Daes in respect of agenda item 2, on the understanding that the question of time limits for statements would be reviewed when other agenda items were taken up.

4. It was so decided.

5. The CHAIRMAN invited representatives of Governments wishing to do so to take the floor on agenda item 2.

6. Mr. KESANG (Observer for Bhutan) said that significant progress had been made in solving the problem of the refugees in camps in eastern Nepal. The tenth meeting of the Ministerial Joint Committee, held in Kathmandu in December 2000, had led to an agreement on the establishment of a joint verification team that would determine the identity of the refugees, many of whom were not Bhutanese, as both Governments had acknowledged. Verification of the first camp had begun on 26 March 2001 and was proceeding smoothly. The verification exercise would ensure that all persons had an opportunity to state their claims. The Governments of Bhutan and Nepal would be meeting during the second half of August 2001 to discuss the joint verification process.

7. The Government of Bhutan remained committed to finding a just, comprehensive and lasting solution to the refugee problem; it was prepared to implement any agreements that were concluded with the Government of Nepal and was confident that the international community would encourage that bilateral process.

8. Mr. VAHABZADA (Observer for Azerbaijan) said that the principles of international law that prohibited the occupation or acquisition of another State's territory by force were often violated. There were situations in which territories continued to be occupied even after the Security Council had condemned their occupation and called for respect for the sovereignty, territorial integrity and inviolability of the occupied State's internationally recognized borders.

It was also disturbing to note that the restoration of human rights, including compensation and prosecution for the crimes committed, was being obstructed by the refusal of certain Governments to recognize their role and their responsibility, direct and indirect, in armed conflicts.

9. His Government was deeply concerned at the acts of terrorism committed by the other State party to the conflict with a view to dismembering a sovereign State, and it was concerned that occupied Azerbaijani territories had become a focal point for illicit trafficking in weapons and narcotic drugs. States not involved in the conflict were supporting and encouraging those actions, which was one of the main reasons for the spread of armed conflicts that threatened stability and security not only in the South Caucusus but in the world. The international community should therefore prepare a comprehensive legal framework for combating international terrorism as a crime against humanity.

10. Violations of the provisions of international law which prohibited the transfer by an occupying Power of its own population to the territory it occupied constituted a war crime entailing international criminal responsibility. Such transfers were intended to prolong the occupation indefinitely. His Government was also concerned by the problem of missing persons in armed conflicts and wished to draw the attention of the Sub-Commission to the fact that the work of international humanitarian organizations was hampered by the illegal detention of a certain category of persons by the other party to the conflict. The Sub-Commission could make a positive contribution to the work done on those topics by studying existing practices more fully.

11. Mr. IŞCAN (Observer for Turkey) said that the advancement of nations was currently assessed on the basis of respect for human rights, which was an ideal for all of mankind. In that connection, his Government was fully committed to implementing constitutional and legal amendments that would align domestic legislation with international standards and improve the situation of human rights in Turkey. Given that that process was irreversible, the authorities were endeavouring to promote human rights education.

12. Parliament had adopted a number of legislative texts aimed, inter alia, at a restructuring of the State security courts and the introduction of an amnesty and sentence reduction through a "repentance law"; the provisions of the Criminal Code defining torture, ill-treatment and abuse of power by civil servants had been amended to increase sentences imposed for the commission of those offences by public officials or the drafting of false medical reports to conceal acts of torture. The definition of torture and inhuman or degrading treatment had been brought into line with the definitions contained in United Nations and European instruments. Reform of the Civil and Criminal Codes, the Code of Criminal Procedure and the Code on the Execution of Sentences was continuing, and draft legislation establishing the institution of ombudsman had been submitted to Parliament. Various legal and administrative measures would be taken to prevent any future allegations of torture and ill-treatment in Turkey and to enhance the independence of the judiciary. A law on the postponement of trials and sentences for crimes involving the mass media had also been adopted.

13. The Government was determined to strengthen and upgrade the status of structures for the protection of human rights. The Government's human rights activities were now the responsibility of the High Council for Human Rights, which was chaired by a Minister of State. A human rights department in the Office of the Prime Minister and a human rights consultative board had been established. Human rights councils had also been set up throughout the country.

14. Improvement of the conditions of detention in prisons was another priority of the Turkish Government, and a reform known as the F-type prison project had been introduced. Although the new prisons were fully compatible with European standards and offered far better living conditions, organized gangs had launched a campaign of hunger strikes. All efforts by the authorities to find a peaceful solution and bring the strikes to an end had proved fruitless. As the lives of certain prisoners on strike had been in serious jeopardy, security officers had had to intervene. Despite the measures taken to minimize casualties, some officers and prisoners had lost their lives. Those tragic events showed how urgent prison reform had become in Turkey, and any criticism of that reform was unfair and malicious, since the reform was intended to make Turkish prisons conform with the highest international standards.

15. Turkey had signed both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on 14 August 2000. It had also signed the two Optional Protocols to the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 8 September 2000. Ratification of the Convention on the Elimination of All Forms of Racial Discrimination had begun, and Turkey had ratified International Labour Organization (ILO) Convention 182, on the worst forms of child labour. In addition, Turkey was cooperating closely with the human rights bodies of the United Nations system. The Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions had visited Turkey in February 2001, and the Representative of the Secretary-General on internally displaced persons was expected to visit soon.

16. Guided by the Turkish people's desire to become fully integrated in the international community, the Turkish authorities were determined to build a democratic and secular society in which human rights were fully respected. His delegation therefore hoped that the dialogue on human rights issues would be characterized by goodwill, sincerity and cooperation.

17. Mr. AKRAM (Observer for Pakistan) said that the Pakistani authorities had instituted a series of measures to promote human rights in Pakistan. Specifically, they had launched a vast structural reform programme with a view to improving governance and reducing poverty. A study group on human development had been set up and the authorities were committed to developing a coherent and transparent economic policy that would eliminate all forms of corruption.

18. The Government was also planning to implement the Supreme Court's decision to hold general elections by 12 October 2002. Some local elections had already taken place, and candidates for the office of district administrator would include representatives of minorities; 33 per cent of all vacancies would be reserved for women. The high voter turnout in

local elections was a clear indication that the population fully supported grass-roots democracy. It should also be noted that for the first time in the history of Pakistan civil servants and police officers would report directly to local elected officials.

19. A policy and a plan of action for ending child labour and preventing the hiring of underage children were being implemented at the national level. Measures had also been instituted to make primary education universal and to encourage working children to pursue out-of-school education and vocational training.

20. Illegal weapons, which were a major factor in violence and civil unrest, were another source of concern to the authorities, and a campaign had been launched to eliminate them. A series of measures had also been taken to revitalize the judiciary, chiefly through the introduction of computers, reduce the length of trials and strengthen the training of judges. A standing commission on police and prison reform had been established. The Government had penalized 29,000 police officers for abuse of authority and had removed another 1,100 from their posts for embezzlement. In addition, more than 60,000 prisoners had been released during the past 18 months, and an ordinance abolishing the death penalty for persons under the age of 18 had been promulgated.

21. The Government was encouraging civil society to contribute to the promotion and protection of human rights. Nearly 12,000 non-governmental organizations (NGOs) were registered with the Department of Social Affairs, and 460 development projects of the Ministry of Women's Development had been assigned to NGOs. Women were encouraged to play a role in all areas; they were represented in federal, provincial and local institutions. All those measures to promote and protect human rights should also contribute to the solution of the problems of peace, security and development in South Asia.

22. Ms. RUSTAM (Indonesia) said that over the past three years Indonesia's leaders had had to face a wide range of challenges posed by the transition from an authoritarian regime to a representative pluralistic democracy in which human rights were duly respected. Progress had been made in the promotion and protection of human rights in society and national institutions. A law had been passed in November 2000 which provided for the setting up of human rights courts to hear cases of grave human rights abuses, genocide and crimes against humanity. Two decrees had also been issued establishing human rights courts in the cities of Jakarta, Medan, Surabaya and Makassar. Another decree had established two ad hoc human rights courts at the Jakarta District Court headquarters to hear cases of gross human rights violations in East Timor and Tanjung Priok. The Indonesian authorities and the Office of the United Nations High Commissioner for Human Rights had established technical cooperation programmes which included training of the judges who would serve in the ad hoc courts.

23. Hundreds of presumed human rights violations had led to investigations which had culminated in a number of trials in joint civilian-military courts. The Government had worked closely with the National Commission on Human Rights to investigate incidents which had occurred in East Timor, Abepura, Papua, Kebun Cengkeh and the Moluccas. Unfortunately, those efforts had been overshadowed both by separatists movements and by inter-community conflicts in far-flung corners of the country. The Government had been actively pursuing a policy of dialogue, which it saw as the only realistic way forward.

24. In Aceh, the Government had held several rounds of talks since January 2000 with the leaders of the Free Asia Movement and had adopted a series of measures aimed at improving the situation in the province, particularly in the economic sphere. The Government had granted Aceh special autonomy which allowed it to apply Islamic law. In addition, 70 per cent of oil and gas revenues and 80 per cent of all revenues from agriculture and fisheries would be returned to the province.

25. In Papua, despite sporadic bouts of militant resistance and armed insurrection over the past four decades, the Indonesian Government was intent on implementing wide-ranging reforms of democratic institutions and redressing the socio-economic situation. Draft legislation granting the province special autonomy had been passed by the Government and would give Papua wide-ranging rights in local governance and a greater share of the revenues accruing from the exploitation of its natural resources.

26. The conflict in the Moluccas was on the way to being resolved as a result of a concerted policy which actively engaged religious and community leaders in dialogue in order to restore lasting peace in the archipelago. Humanitarian initiatives had been taken and rehabilitation, resettlement, reconstruction and reconciliation activities were being carried out. The efforts by both the central and local Governments to tackle the root causes of the unrest had led to a visible improvement in the situation.

27. In East Timor the question of the status of refugees had yet to be resolved, but the Indonesian Government was sparing no effort to find a peaceful and fair solution. The registration of refugees had been monitored by 12 international observers, who had been impressed with the organization of the operation and the conditions in which it had taken place. Registration had been completed on 7 June 2001 and had shown that only a handful of refugees wished to return to East Timor. The overwhelming majority had expressed a desire to remain in Indonesia, where they would be resettled and no longer be considered refugees. Since that time, the Indonesian Government had held several meetings with representatives of the United Nations, the International Organization for Migration and the European Union on the topic of refugees.

28. The Government had also reinforced its cooperation with the United Nations Transitional Administration in East Timor (UNTAET), with which it had signed a memorandum of understanding on mutual assistance in legal, judicial and human rights matters. On 19 and 20 July 2001, the Indonesian Government had met with representatives of UNTAET to discuss border security cooperation, police cooperation and cross-border movements of people and goods. At the same time, her Government condemned the recent border incident in which an Indonesian soldier had been killed by a member of the United Nations peacekeeping forces in East Timor. The Government had demanded that UNTAET should conduct a thorough investigation of the incident. Since 1997, Indonesia had been beset by serious political and economic problems which posed an enormous challenge for a country that was vast and geographically spread out, but the Government was determined to take on that challenge within a democratic system. In so doing, it sought to redress past wrongs.

29. Mr. GUISSÉ said emphatically that, notwithstanding the many official statements on the progress of human rights, the world was increasingly seeing those rights denied. Human rights were being flouted and trampled underfoot everywhere. The hopes that had been raised by the adoption of the Universal Declaration of Human Rights had become a pipe dream. The decline of human rights was reflected in violations that were increasingly frequent, serious and massive, and in the impunity of those who systematically perpetrated such violations, whether States or individuals. Torture had become commonplace, used routinely by the police and in preliminary investigations. Torture, both physical and psychological, had become the tool of choice for those in power who used it to extract the truth and keep their peoples in submission. In that regard, it must be said that all States were primitive and brutal.

30. An example of the denial of the most basic rights was the degrading treatment inflicted on migrant workers and their families in Europe in border police stations. The serious abuses they suffered - which sometimes led to their death - went entirely unchecked; such practices had in fact been strongly condemned by the European Court of Human Rights.

31. The lack of respect for human rights was patently obvious in Africa, a continent plunged in utter poverty and faced with the spread of the most serious diseases and the threat of widespread famine. Yet the international community did not appear unduly worried, since pharmaceutical laboratories had initially denied Africa certain treatments for acquired immunodeficiency syndrome (AIDS). Likewise, certain scientific experiments in South Africa under the apartheid regime had been quite simply aimed at destroying the black race by attacking melanin - an act that constituted an extreme form of denial of the right to be different - had elicited hardly any international reaction at all. One might wonder whether the world had become a place in which certain races had to be eliminated in order for others to survive.

32. At a time when the wrongs done to peoples throughout history were being acknowledged, Africa and its people were being denied an opportunity for acknowledgment of the inhuman treatment that had been inflicted on them. The international community refused to recognize that slavery constituted a crime against humanity. The Sub-Commission itself had requested Mr. van Boven to prepare a study on possible forms of reparation for violations of human rights and humanitarian law. One might well ask whether the conclusions of that study would be applicable to Africa. The text, however, existed and the means of making reparations were clear. Yet Africa was being asked to renounce any request for reparation. The international community was applying a double standard, and the Third World could only find its attitude disturbing.

33. Mr. JOINET noted that the scandal provoked by the refusal to distribute AIDS vaccine in its generic form had prompted a response, including from ATTAC, a French NGO, which had mounted a major campaign to deal with that problem. He wondered whether the Commission on Human Rights or the Sub-Commission was the proper body to follow up the study by Mr. van Boven which Mr. Guissé had mentioned.

34. Mr. PINHEIRO warmly commended Mr. Guissé for having raised the question of reparation openly, since in other forums, particularly the Preparatory Committee for the Durban Conference, efforts were being made to stifle any discussion of the problem. The Sub-Commission must consider ways of honouring the legitimate claims of all peoples whose rights had been violated.

35. Mr. EIDE cited the example of the German Government, which had just recognized Germany's responsibility to foreign civilians who had done forced labour during the Nazi period. Japan, which had yet to make amends honourably for similar practices, might do well to consider the legislation recently adopted by the Bundestag. Looking beyond those examples, the whole issue of the consequences of slavery and colonization - and modes of compensation - must be reviewed.

36. Ms. WARZAZI said that she had long hoped to see the question of reparation for the peoples who had suffered the ills of colonization in general placed on the agenda of the United Nations. An opportunity to raise the topic had been provided, through a text on impunity, by Mr. Joinet the previous year. The question of reparation for flagrant and massive abuses of human rights which constituted crimes against humanity committed during the colonial period, the wars of conquest and slavery had thus been mentioned for the first time in the Sub-Commission's decision 2000/114, adopted at its previous session. Pursuant to that decision, the Sub-Commission had before it a note from the Secretary-General on that topic, and that constituted a first step.

37. At present it was clear that the simplest way of solving the problem of reparation would be debt cancellation, since the developing countries' current situation was essentially the result of the plundering of their natural resources by the colonial Powers. The question should therefore be considered calmly, without yielding to the blackmail of certain States that sought to avoid a debate on colonialism at the Durban Conference. The problem of impunity had been raised. The Sub-Commission must continue to explore it in greater depth until the peoples concerned had been vindicated. The question could be the subject of a draft resolution of the Sub-Commission.

38. Mr. ALFONSO MARTÍNEZ said that he shared a number of the concerns raised by Mr. Guissé and wished to associate himself with his statement. The Sub-Commission must consider how to compensate massive violations committed in the past without overlooking contemporary problems. It needed to formulate concrete proposals on the topic, taking into account the work done by other competent bodies.

39. Mr. JOINET said that, at the level of principle, there was a certain convergence of views, at least within the Sub-Commission, concerning recognition of the right to reparation. That aspect of the question, then, should not pose too many problems. The question of modalities, however, might be more problematic. In their joint report on the question of impunity, he and Mr. Guissé had already outlined the possibility of providing compensation in the form of debt forgiveness. That idea was beginning to take hold, but the means of financing such a measure had to be determined. Some had suggested the imposing of a global tax, or Tobin Tax, but that

solution would still require some technical refinements. As what was most important was to state the problem, and it would therefore be useful for the Sub-Commission to summarize its contribution to the topic in a document in order to see how it could move the discussion forward without duplicating the work done by other bodies.

40. Mr. GUISSÉ said that he did not view reparation as being solely financial. It could take many forms in addition to debt cancellation, such as recognition of the black slave trade as a crime against humanity, recognition of the rights of the African people and restitution of stolen cultural property, for example. Official development assistance and technology transfers were still other forms of compensation. Reparation was not in itself quantifiable, but was something that could only be estimated. It was that estimate that would ultimately allow all the parties concerned to dispose of the problem of slavery and its consequences.

41. Mr. EIDE supported the principle of debt cancellation as a form of reparation; however, it was important to ensure that such a measure did not benefit only those in power but had a positive impact on all the people concerned. Debt cancellation should therefore be subsidiary to ensuring the exercise of economic and social rights in particular. The Sub-Commission might wish to consider preparing a study on ways of making the principle of debt cancellation technically feasible.

42. Ms. ZERROUGUI said that in the light of the machinations of certain States, it was essential first of all to secure recognition of the wrongs done to the peoples who had been victims of slavery and colonization. Once that claim had been honoured, the question of compensation could be considered. The debate had clearly not reached that point yet, as the Preparatory Committee for the Durban Conference was making clear. However, what the peoples that had suffered from colonization and slavery sought was recognition of the fact that they had been raped, that they had been victims of unspeakable crimes and that their delay in developing was largely attributable to the oppression and plundering that characterized their past.

43. Ms. DAES said that she herself had seen the terrible consequences of colonialism during a trip to Morocco. That was why it was now necessary for the former colonial Powers to acknowledge their responsibility. The question must be considered from the moral standpoint, before considering what measures to take. She believed that the Sub-Commission should submit a study on that topic.

44. Mr. FAN Guoxiang endorsed the statement by Mr. Guissé, but wondered how far back in the history of mankind one should look when considering the question of victims: ought one to go back to the Roman Empire, or to Genghis Khan? He proposed beginning with recent history, in other words with colonization, and to consider the consequences of colonization and of the Second World War. In both cases, the question must first be considered from the moral standpoint before the extent of compensation could be determined. The political aspects of the question should also be considered, with thought given to who would provide compensation and who would benefit from any compensation made. The legal aspects of the question, however, did not fall within the competence of the Sub-Commission; other bodies existed to consider them.

45. Mr. JOINET said that the Sub-Commission was in a position to bring technical expertise to the question of acknowledging the wrongs done to the victims of colonization and slavery by basing itself on its prior work. Should the Sub-Commission prepare a new document, it ought to be brief and provide a set of references. It would have a first section that would include the statement by Mr. Guissé, who had clearly demonstrated that, in addressing the question of reparation, the problems involved were not necessarily insoluble. Mr. Guissé had spoken of recognition, rehabilitation, possible compensation and restitution. Those measures could be implemented in phases, and even be partial in nature.

46. The second section of the document would consider how the process of reparation would be carried out. First came recognition, which could be broken down into external and internal recognition. External recognition was a topic of current interest, and recent history afforded some examples: President Cardozo in Brazil had recognized the atrocities committed by the military Government and Spain had rehabilitated Republican combatants in the Civil War. Internal recognition was more difficult. The problem could be seen in contemporary France, where the question of responsibility for the atrocities committed during the war in Algeria were giving rise to a huge debate within public opinion, including military circles. In other words, a political declaration by a head of State was not enough. People's ways of thinking must be changed, and such a change was made more difficult by the fact that it had to be wrought by a generation which, being younger, felt less affected by the mistakes or errors of its elders.

47. There was also the question of restitution, which referred chiefly to cultural property. For such reparation to be effective, it was necessary not only to give back to a country its cultural heritage, but also to provide the country with the means of conserving that heritage.

48. Lastly, there was compensation. But regardless of whether it involved debt cancellation or another form of cooperation, the beneficiary must always be the people.

49. Mr. PARK said he was sincerely grateful to Mr. Guissé for having opened the debate on the question of reparations. As one speaker had noted, Germany had successfully managed to confront its past, which was not the case with other countries of that region. International law provided for various ways of making compensation, but that was not the most important aspect of the question. What was essential was the moral attitude of the great Powers vis-à-vis their colonial past. He agreed with other speakers in that regard and felt it was indispensable that the question should be dealt with systematically, both under agenda item 3, in connection with impunity, and in another context.

50. Ms. HAMPSON said she wished to draw a clear distinction between reparations in the strict sense of the term, which meant compensation for damages, and moral reparations. In the first case, there must be a victim to compensate, whether it was the actual victim or the victim's descendants, and a natural time limit. Moreover, the person to be compensated must have been the victim of an act recognized as an offence or a crime at the time it was committed. Otherwise, a person could be punished for an act that had not been illegal at the time it had been committed, which in criminal law constituted a violation of human rights. That being said, there were many acts that had been illegal at the time they had been committed. That had been the case during

the 1930s and 1940s, even though the Geneva Conventions had not yet come into existence. Moreover, the wars of decolonization had also been characterized by illegal acts, whether as part of internal conflicts or international conflicts.

51. With regard to recognition of crimes committed, she observed that while Germany could be cited as an example in that connection, some States still had a long way to go. And Japan was not alone in that respect. Italy, for example, was having a great deal of difficulty in acknowledging the use of poison gas by soldiers in what had been Abyssinia and was now Ethiopia.

52. Unfortunately, in speaking of reparations stricto sensu there did not seem to be any courts where appeals could be lodged. She was thinking, for instance, of the comfort women and prisoners of war who had filed complaints in vain with the Japanese courts. It was therefore necessary to specify what was meant by appeal bodies when dealing with reparations stricto sensu. As for moral reparation, she was in favour of the proposal by Mr. Joinet to prepare a document that would include Mr. Guissé's statement. It was also crucial to acknowledge the importance of symbolic gestures.

53. She supported Ms. Warzazi's suggestion concerning debt forgiveness, provided that that was not the only measure contemplated. Lastly, she believed that the debate on the question of reparations that was taking place in other forums would be facilitated if the distinction which she had just made between the two types of reparation was adopted. She therefore hoped that the calm debate which had taken place in the Sub-Commission would serve as an example for the Preparatory Committee for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and help to bring about a consensus.

54. Mr. GUISSÉ said that Mr. Fan Guoxiang seemed to want to limit the question of compensation to the colonial period in order to avoid talking about slavery; he had also raised the issue of who would provide compensation and who would benefit from it. In the International Bill of Human Rights, the term "people" was used several times when recognizing rights and conferring obligations. The concept of reparations was directed at peoples, whether they were victims of colonization or of slavery and regardless of time period. The matter of the date should be left for political leaders to determine. The black slave trade had targeted a people, and it was a people that was concerned. It had been said that if an act had not been considered a crime when it was committed it was not possible to obtain reparations. Yet slavery was considered to be a crime against humanity, and must be covered by imprescriptibility, international and universal competence, in accordance with the Rome Statute of the International Criminal Court. One should assume that compensation could not be quantified but merely estimated, and that such compensation should go to the people and not to their leaders.

55. Mr. PREWARE paid a tribute to Mr. Guissé, who had had the courage to express his convictions. He was pleased that members of the Sub-Commission had taken up the debate on the question of recognizing the victims of colonization and slavery from a human rights standpoint and that they agreed to recognize the injustices that had been done and the need for reparations. He urged the members of the Sub-Commission, which had a mandate to promote and protect human rights and continued to be the conscience of the international community, to raise their voices in other forums on the eve of the Durban Conference, where there was clearly

some reluctance to acknowledge not only the moral aspect of the question of reparations but also its economic consequences. The draft resolution proposed by Ms. Warzazi would provide an opportunity to state the Sub-Commission's position. The question of reparations should be considered from a technical standpoint as well, although it was not within the Sub-Commission's competence to do so, nor was it the time or place to begin a study on that topic.

56. Ms. WARZAZI said that she did not wish to see the question of victims of the Second World War and that of the victims of colonialism and slavery considered in the same light. The Nürnberg Tribunal had tried those responsible for crimes committed during the Second World War. However, no tribunal had judged those who had been responsible for colonialism. She therefore invited the Sub-Commission to take up the topic, which had never been considered within the United Nations, limiting itself to colonialism and its impact on human rights. She also wished to point out that it was in Morocco, during the Rif War, that the first poison gas had been used.

57. Mr. SIK YUEN noted that some members of the Sub-Commission were recommending the preparation of a study or a report on the topic. However, the Sub-Commission should ensure that such a study or report did not duplicate other important documents, such as the Revised Set of Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law prepared by Mr. van Boven (E/CN.4/Sub.2/1996/17), or the report on the question of the impunity of perpetrators of human rights violations (civil and political) prepared by Mr. Joinet (E/CN.4/Sub.2/1997/20/Rev.1), or the work of Mr. Bassiouni, independent expert on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms, who had been appointed by the Commission on Human Rights in 1998.

58. He noted that the Sub-Commission was approaching the question of reparations by going back in time to the period of colonization but had not dealt with the question of the right to effective compensation for current victims of human rights violations. Yet existing provisions in that area seemed unsatisfactory, and the Sub-Commission should carefully consider the question of State responsibility as it applied to human rights violations. Furthermore, when crimes, particularly crimes of a racist nature, were committed by groups, the application of the principle of strict no-fault liability should allow victims to obtain compensation, even when it was not possible to identify the perpetrator or perpetrators of the violation in question. Such an initiative would be justified not only in moral terms, but also in legal terms, since responsibility would be contemplated from the standpoint of the victims, and also in sociological terms, since it would meet a growing need for social justice.

59. Mr. KARTASHKIN observed that, while it was true that slavery and colonialism had been considered normal practice in the past, they were today considered to be crimes whose victims - peoples and countries - ought to be able to obtain compensation. That being the case, it was not enough to set out standards or principles; it was also necessary to secure the agreement of large groups of States on that sensitive question. It would in fact be hard to move ahead if a fairly unanimous approach could not be adopted. If the Sub-Commission wished to move the debate forward, it must therefore do everything possible to state a coherent point of view in the context of agenda item 2.

60. Nevertheless, the question of reparation was applicable to all human rights violations, regardless of their form or causes. Those could be numerous and complex, since human rights violations could be the result, for example, of conflicts between States, the refusal of some States to ratify major international instruments, the interference of certain States in the internal affairs of other States, including through the recruitment of mercenaries, or in the emergence of separatist movements that resorted to terrorism.

61. Mr. PINHEIRO said that he had the greatest respect for all victims of the Second World War; he was pleased to note that some of them had begun to obtain compensation and, likewise, that the victims of certain Latin-American dictatorships were beginning to be recognized as such and even to obtain compensation in some cases. Societies were also beginning to take action on behalf of those who were being left behind by globalization. As for the victims of arbitrary police practices, which seemed to occur regularly in the major democracies every time peaceful demonstrations were mounted to protest against the holding of summit meetings of the Group of Seven (G 7), victims in whom the Sub-Commission ought perhaps to take an interest, they had an opportunity to defend themselves and made use of it.

62. In contrast, the descendants of the victims of slavery and colonialism could not defend themselves. The Sub-Commission had a duty to help them ensure that the responsibility of the colonial Powers was acknowledged. It would of course be interesting to prepare a study or a report on the subject, but it was above all extremely important to send a clear message, in the form of a resolution, to the World Conference against Racism.

63. Mr. SORABJEE said that there was nothing ambiguous about the question. Slavery was indeed a crime against humanity, even if its practices had been considered normal at the time in which they had been committed, and it was imperative at the very least that the States that had profited from slavery should explicitly recognize that and accept their moral responsibility. Questions of a more practical nature, such as determining how far back in history to go, whether compensation should be provided and, if so, how and to whom could be settled later, in other international forums. In the meantime, the Sub-Commission ought to take the first step and, in a resolution, call upon those States that had profited from slavery to acknowledge their moral responsibility.

64. Ms. TERAO agreed that the questions of acknowledging the violations committed and reparation for those violations were very important; however, the Sub-Commission should also focus on the notion of transmitting the memory to future generations. She referred in particular to the question of "comfort women" during the Second World War and cautioned against giving younger generations a simplistic view of the human rights violations committed by preceding generations without placing them in their context.

65. Mr. EIDE supported Mr. Pinheiro's proposal to send a strong message to the Durban Conference.

66. Mr. PARK said he understood that the proposal by Mr. Pinheiro and Mr. Eide was to transmit a Sub-Commission resolution to the World Conference against Racism concerning the moral responsibility of the former colonial Powers and the countries that practised slavery.

67. Ms. WARZAZI proposed that Mr. Pinheiro and Mr. Eide along with Ms. Zerrougui should be assigned to prepare a draft resolution on the topic with the assistance of any other Sub-Commission members who desired to do so.

68. Mr. GUISSÉ said that he wished to participate in the drafting of the text.

69. The CHAIRMAN said that, if he heard no objection, he would take it that the Sub-Commission wished to prepare a draft resolution on the moral responsibility of the former colonial Powers and countries that had practised slavery which would be sent to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

70. It was so decided.

71. Ms. HAMPSON recalled that Mr. Guissé had mentioned the problem of human immunodeficiency virus (HIV) and AIDS and the actions of the major pharmaceutical companies. She hoped that the Sub-Commission would return to that topic, possibly under agenda item 4.

Statements in exercise of the right of reply

72. The CHAIRMAN invited observers from countries wishing to do so to make statements in exercise of their right of reply.

73. Mr. BENCHERIF MOHAMED EL AMIME (Observer for Algeria), referring to the remarks made by the representative of the International Federation of Human Rights Leagues (FIDH) on the situation of human rights in Algeria, said that FIDH was not in a position to preach to countries of the Third World. Between 1922, when FIDH had been established, and the 1970s, when a number of African countries had gained independence, FIDH had supported all colonialist policies and had remained silent in the face of revolts by African peoples. In particular, it had not reacted to the deportations of King Behanzin of Dahomey and King Mohamed V of Morocco. It had never taken a stand on the Sétif and Guelma massacres which had taken place in Algeria on 8 May 1945, nor on the massacre in Madagascar in 1947. While it had welcomed the adoption of the Universal Declaration of Human Rights in 1948, it had in fact claimed that the time had not been right to apply that instrument to colonized peoples. Lastly, FIDH had remained blind to the massacre of Algerian workers in Paris on 17 October 1961, even though that massacre had occurred in front of its headquarters.

74. For all those reasons, the Algerian Government considered that FIDH was unworthy to address the United Nations, and all its allegations regarding any country at all were null and void. Moreover, FIDH should stop hiding behind the French League of Human Rights, which had at times played a distinguished role.

75. Mr. EIDE asked whether FIDH would have an opportunity to make a statement in reply to the comments made by the observer for Algeria.

76. The CHAIRMAN said that FIDH would have an opportunity to take the floor again during the consideration of other agenda items if it so desired.

77. Mr. HAMZALT (Observer for Malaysia) said it was unfortunate that the observer for the World Organization Against Torture had spoken of the arrest and detention of certain activists under the Internal Security Act by presenting only part of the facts and taking them out of context. Malaysians were in fact free to participate in the democratic process, but unconstitutional activities aimed at undermining the country's democratic institutions to the detriment of public order were not sanctioned by either the people or the Government of Malaysia. The activists referred to by the observer for the World Organization Against Torture had been detained because the police had found it necessary to question them as part of an ongoing investigation of some of their activities. The police had reason to believe that the activists had planned to organize street demonstrations and illegal assemblies with a view to removing the democratic Government. The activists had not been incarcerated, however. The police, being mandated to ensure respect for the rule of law and maintain public security, were therefore allowed to take preventive measures under the Internal Security Act.

78. That Act had been enacted in accordance with article 149 of the Malaysian Constitution, which concerned procedures to prevent subversion, organized violence and acts prejudicial to public order and peace. It sought to protect Malaysia's democratic institutions, social and economic security and to preserve harmony and stability within a multiracial, multicultural and multireligious society. The Act was not intended to punish those with divergent political views, so long as those views were expressed peacefully within the framework of the democratic process and the laws of Malaysia.

The meeting rose at 6.05 p.m.

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SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 6th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 2 August 2001, at 10 a.m.

Chairperson: Mr. WEISSBRODT

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (continued)

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The meeting was called to order at 10.05 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (item 2 of the provisional agenda) (continued) (E/CN.4/Sub.2/2001/3 and Add.1-3; E/CN.4/Sub.2/2001/NGO/1, 4, 7, 8, 10, 12, 14 and 15)

1. Mr. GOONESEKERE said that emotions had run high at the previous meeting. The issue of reparation for colonization called, however, for a more studied approach. Members should also seek to be more specific and objective in their interventions.

2. Sri Lanka, his own country, was one of the many former colonies that had been conquered by "bible and sword". Over the centuries, Portuguese, Dutch and British occupying Powers had successively imposed their own churches, languages and administrative practices on the Sri Lankan people. Although compensation for the plundering of a country's land and mineral resources might more easily be made, the issue was complicated by the technological, educational and cultural benefits which could nonetheless result from colonization, and by the unfair distribution of those benefits among a colonized population.

3. Local rulers were often accused of having plundered their own country's assets, but it was necessary to determine who was responsible for corrupting those rulers in the first place. During Nigeria's oil boom, foreign companies had bribed local officials into authorizing the construction of super highways that had proved so ill-adapted to the local climate that they had failed to benefit the local population. Who was to be brought to account for such a blunder?

4. Much as the Sub-Commission must clearly sympathize with the victims of colonization and slavery, it should also be prepared to consider the evidence that conquest had, at the time, been considered a legitimate practice. It must also examine the question of reparation for slavery in all its contemporary forms and not just that most heinous one: the forcible uprooting of persons, to be treated as third-class citizens abroad.

5. Mr. van HOOF said that, while the debate on item 2 had thus far proved most constructive, it would benefit from a more structured approach, the parameters of which had yet to be agreed by the Sub-Commission. He agreed with the previous speaker that the issue of reparations was highly complex. Mrs. Warzazi's suggestion that debt relief should be viewed as a means of redressing past wrongdoings merited further consideration. It was also his view that the Sub-Commission should contribute to the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance by submitting concrete proposals. The Sub-Commission might emphasize, for example, that any reparations must benefit the local people, since it was individuals - not States - who were the bearers of human rights.

6. It was a matter of concern that non-governmental organizations (NGOs) were not reflected in the records of sessions submitted to the Commission, especially considering the latter body's recommendation that the Sub-Commission should enhance the participation of NGOs in its work. Moreover, the Sub-Commission itself risked being condemned to silence if it was not to reflect on country-specific situations.

7. He fully endorsed Ms. Hampson's condemnation of recent Israeli action in Palestine. He also welcomed her structured and thematic approach to the agenda item. The theme of accountability certainly merited further attention, as also, in his view, did the lawfulness of detention.

8. Mrs. WARZAZI said that it was impossible to speak of human rights without recalling the intolerable situation in the occupied Palestinian territories. It could hardly be called a war when young men with nothing but stones and courage were pitted against all the sophisticated weaponry of the Israeli armed forces. The world's leaders allowed Israel to act with complete impunity and were thus to some extent complicit. How was it possible to proclaim a culture of human rights when thousands of Palestinian people continued to be subjected to arbitrary attack, torture and closures, and when the Security Council failed to take decisive action to end those crimes?

9. Moreover, the right of veto in that body ran counter to the spirit of the Charter of the United Nations, having become the personification of murder and terror, while political pressures were exerted to silence dissent. Only the previous month, the International Committee of the Red Cross (ICRC) had apologized to the representative of Israel for stating that the Israeli settlement policy was a serious violation of the Fourth Geneva Convention and constituted a war crime. How could Governments that preached human rights while turning a blind eye to their violation sit in judgement over others?

10. The agenda item under consideration provided an opportunity to denounce human rights violations wherever they might occur. NGOs participating in the debate had drawn attention mainly to situations in developing countries. Although she shared most of their concerns, she believed that attention must also be drawn to a new form of political colonialism, namely, the unacceptable behaviour of certain Western Governments which consisted in seeking to impose their own model of democracy on the world despite reneging on their international obligations.

11. The new world philosophy led by the Washington consensus consisted in removing customs barriers only to relinquish national sovereignty to gigantic transnational corporations. Meanwhile, demonstrators protesting against a globalization that failed to answer the needs of the developing countries were met with excessive use of force by the police.

12. Drawing attention to human rights violations in so-called "democratic" developed countries, she said that prostitution was widespread, and the police and judiciary frequently turned a blind eye to the paedophilia to which children were exposed. Migrant workers and immigrants were subjected to discrimination and harassment in such countries, and did not enjoy access to proper legal recourse.

13. Referring to the situations in specific developed countries, she said that in France, a recent study had revealed that 69 per cent of the population held racist or xenophobic views. In Belgium, a local insurance company had withdrawn cover from 500 Moroccans on the basis of their nationality, and other companies appeared to be following suit, while, in the United Kingdom, minorities had been forced to defend themselves from racist attack. In Italy, a political leader had recently proposed the construction of a 260-kilometre anti-immigration wall along the border with Slovenia, and in Spain, a demonstration by illegal immigrants had been severely repressed.

14. The Sub-Commission could also not afford to be silent about gross human rights violations in Iraq for which two countries bore the primary responsibility. The sanctions imposed on the country had caused such massive suffering among civilians and had been responsible for so many deaths that the other permanent members of the Security Council had called for the embargo to be lifted. Despite the fact that Iraq had been almost completely disarmed and its development arrested, United States and United Kingdom aircraft continued to bomb the country, killing more civilians. The World Health Organization (WHO), for its part, did not appear sufficiently concerned at the effects on the Iraqi population of the use of depleted uranium. Meanwhile, the oil-for-food programme had failed to authorize deliveries of essential vaccines.

15. Mrs. DAES said that gross and systematic violations of human rights had been taking place in Cyprus for the past 27 years. Despite numerous United Nations decisions, recommendations and resolutions to restore respect for the rights and freedoms of all Cypriots, successive Turkish Governments had collaborated with the illegal regime of occupied northern Cyprus to obstruct the efforts of human rights defenders.

16. On 10 May 2001, the European Court of Human Rights had delivered its verdict concerning the responsibility of the Turkish authorities for 14 violations of the European Convention on Human Rights. Regarding Greek-Cypriot missing persons and their relatives, the Court had found continuing violations of article 2 (right to life), article 5 (right to liberty and security of person), and article 3 (prohibition of inhuman or degrading treatment). With regard to the homes and property of displaced persons, the Court had found continuing violations of article 8 (right to respect for private and family life, home and correspondence) and article 13 (right to an effective remedy) as well as of article 1 of Protocol No. 1 (protection of property). A series of violations had been found in relation to the living conditions of Greek Cypriots in the occupied Karpas region in northern Cyprus. They included violations of article 9 (freedom of thought, conscience and religion), article 10 (freedom of expression), articles 3, 8 and 13 and article 2 of Protocol No. 1 (right to education). The Court also ruled that the rights of Turkish Cypriots living in northern Cyprus had been violated, particularly in respect of article 6 (right to a fair trial), on account of the legislative practice of authorizing the trial of civilians by military courts.

17. Referring to an article appearing in the Turkish Cypriot daily Avrupa, of 6 December 1999, she said that illegal settlers outnumbered the resident Turkish Cypriots in the occupied region. Since 1974, while many Turkish Cypriots had emigrated, an estimated 115,000 settlers had been brought to the island as part of a deliberate attempt by Turkey to change its demography.

18. Furthermore, 200,000 Greek Cypriots had been forced to leave their homes, in a clear attempt at ethnic cleansing. Efforts were being made to destroy the island's cultural heritage, including the looting of churches and monasteries, and the illegal sale of religious icons. Turkey continued to defy a ruling by the European Court of Human Rights, dated 18 December 1996, which ordered that compensation be paid to the legal owner of land occupied by Turkish military forces. She called for the territorial integrity of the Republic of Cyprus to be restored, in accordance with United Nations resolutions, and for an end to human rights violations on the island.

19. Ms. ZERROUGUI said that the forthcoming World Conference would provide an opportunity to examine the underlying causes of racism, to call on States to eliminate discriminatory practices, and to adopt practical measures to combat a phenomenon that threatened world peace and security. The divisions within the Preparatory Committee suggested that the draft declaration and programme of action would be nothing more than an illusory consensus, threatening to sidestep the real problems and to allow the former colonial powers to escape accountability for having colonized peoples or reduced them to slavery. It was even more important that the colonial powers should accept responsibility for the serious damage caused to the economic and social fabric in the colonized countries, which could not be dissociated from the inter-ethnic, inter-religious and other conflicts still bedevilling the peoples of Africa, Asia and Latin America. Only by recognizing the wounds of the past could one expect to address the problems linked to contemporary discrimination. In that regard, she welcomed the contribution made by Mr. Guissé at the previous meeting.

20. There were a number of other important sources of disagreement within the Preparatory Committee, including those on the Palestinian question. For 50 years, the Palestinians had lived under occupation, suffering violations of their most basic human rights. Such issues had to be given full exposure, or the World Conference would lead more to words than to action. Fine words not followed by action undermined the credibility of international human rights instruments. Both the Secretary-General and the High Commissioner for Human Rights had spoken at the fifty-seventh session of the Commission on Human Rights of the need to ensure that bold statements of intent regarding human rights became a reality. The Sub-Commission should break the conspiracy of silence and continue to draw attention to legitimate human rights causes.

21. Mr. EIDE said he was concerned at the use of capital punishment and the unfair administration of justice in some countries. In the People's Republic of China, executions of dissidents appeared to be on the increase, while the right to a fair trial was frequently denied. He urged the Chinese authorities to give serious consideration to the provision of more appropriate safeguards for defendants during legal proceedings.

22. The United States was virtually the only country which still executed juvenile offenders, and the number of such executions had recently risen. There was widespread recognition of the racial bias to law enforcement in the United States, which was particularly reflected in the behaviour of police officers. Similarly, in Europe, a discernible police bias had emerged against aliens. On both sides of the Atlantic, certain sections of the population were often prevented from gaining access to qualified legal assistance.

23. Mr. OGURTSOV, having promised to refrain from referring to specific countries, said that violations of human rights and fundamental freedoms were on the increase, having assumed new and more insidious forms. The most flagrant abuses occurred during armed conflicts. People looked to the international community not for words, but for decisive action to break the cycles of violence.

24. According to the United Nations Development Programme (UNDP), nearly 1 billion people lacked adequate food, 250 million children were subjected to child labour, over 1 million women and girls were trafficked for the purposes of sexual exploitation and 1.3 billion people lived in extreme poverty. Moreover, 11 people throughout the world were infected by HIV/AIDS every minute. In Africa alone, the pandemic had caused more than 12 million deaths and it was estimated that, by 2010, more than 40 million African children would be orphaned by HIV/AIDS.

25. In developing and developed countries alike, discrimination against women, minorities and indigenous peoples was widespread. States were either too slow to revise and implement relevant legislation, or merely content to pay lip-service to notions of equality.

26. In the absence of proper administration of justice, legislation to safeguard human rights remained ineffective. Meanwhile, freedom of opinion and association - without which a culture of human rights could not be built - continued to be undermined in many parts of the world. There were 40 countries that lacked a multiparty electoral system and the fairness of the electoral process was doubted in other countries. In many parts of the world, NGO activities were restricted and journalists harassed or killed for speaking the truth. All too often, the security of civilian populations was compromised by conflicts and political repression, with violent crime on the increase in a number of countries.

27. Globalization was creating a new world order, an order that was widening the gap between the rich and the poor and further threatening human rights.

28. Mr. PINHEIRO, drawing attention to the report of the International Commission of Inquiry for Togo (E/CN.4/2001/134-E/CN.4/Sub.2/2001/3) and a letter addressed to the High Commissioner for Human Rights from the Prime Minister of Togo (E/CN.4/2001/134/Add.1-E/CN.4/Sub.2/2001/3/Add.1), said that he had been a member of the International Commission of Inquiry for Togo, set up at the request of the Government of Togo following a statement by the Chairperson of the fifty-first session of the Sub-Commission concerning the human rights situation in that country. The Commission of Inquiry had been established under the auspices of the United Nations and the Organization of African Unity (OAU), and consisted of himself and two other experts, Mr. Abakar (Chad) and Mr. Souna (Niger), appointed by mutual agreement. Its purpose had been to investigate allegations that hundreds of extrajudicial executions had taken place in Togo during 1998, and that the bodies of the victims had been dumped in the sea.

29. Following meetings in Geneva and fact-finding missions to Togo, the Commission had submitted its report on 26 December 2000. It had concluded that, while a number of accounts appeared to substantiate the allegations that bodies had been dumped in the sea, it had been

impossible to determine either the precise number of bodies or whether aircraft had been used to dump them in the high seas. It had recommended that another team of experts should be appointed to clarify the allegations concerning the use of aircraft, and that a special rapporteur on the situation of human rights in Togo should be appointed in order to develop cooperation with the authorities of that country.

30. The Government of Togo had responded by setting up a National Commission of Inquiry, which had published its report in June 2001. He had been surprised to learn that the Government of Togo, in an annex to that report, referred to the application of the procedure established in accordance with Economic and Social Council resolution 1503 (XLVIII). The conclusions of the report were still under consideration by the Commission on Human Rights.

31. Mr. FAN Guoxiang said that human rights violations occurred at both the international and the domestic levels. The colonial empires of the past had been built at the expense of the right to life and development of colonized inhabitants. Without tremendous pressure from the international community, decolonization could not have taken place. The right to international peace and sustainable development was inherent in the effective realization of human rights. Globalization was creating a growing gap between rich and poor, and transnational corporations were controlling world business without paying proper attention to social welfare.

32. The end of the cold war had created new opportunities for disarmament and security. The successful achievements of the Chemical Weapons Convention, the Test-Ban Treaty and the Non-Proliferation Treaty had led to rising expectations of a lasting peace. The conservative administration of a super-Power had, however, undermined those achievements and prevented further progress. By blocking the Kyoto Protocol, it had frustrated the combined efforts of many countries and had shaken confidence in prospects for peace and security. It had put national and commercial interests before international peace and development and ignored the need to guarantee suitable conditions for the promotion and protection of human rights.

33. Mr. ALFONSO MARTÍNEZ said that the turn the discussion had taken since the previous meeting, particularly in response to Mr. Guissé's statement, had opened up new vistas for an interactive dialogue of great value. In terms of procedure, he supported the proposal by Mrs. Daes that each member should be allowed to make more than one statement, provided that a reasonable time limit was observed. Through the summary records of its proceedings, the Sub-Commission should make the criteria underlying the debate clear to the Commission on Human Rights.

34. General Assembly resolution 1514 (XV) adopted in 1960, which contained the Declaration on the Granting of Independence to Colonial Countries and Peoples, stated that the subjection of peoples to alien subjugation, domination and exploitation constituted a denial of fundamental human rights, was contrary to the Charter of the United Nations and was an impediment to the promotion of world peace and cooperation. It thus forged a link between the right of self-determination and the enjoyment of human rights. The two International Covenants

on Human Rights, in their common article 1, stated that all peoples had the right of self-determination, and that, by virtue of that right, they freely determined their political status and freely pursued their economic, social and cultural development. Also, they might freely dispose of their natural wealth and resources. In that connection, he stressed that their wealth and resources included those derived from international trade, which should not be subject to restrictions imposed unilaterally by a State for its own purposes.

35. Human rights continued to be flouted wherever a colonial presence had survived. Where it existed, such a presence tended to be associated with irredentism by peoples who considered that they had been deprived of the right of self-determination. In many cases, their assertion of those rights - in the Middle East, Europe and the Americas - set in motion a cycle of insurrection and repression. He expressed support in that connection for Mrs. Warzazi's statement about the situation in the occupied Arab territories, particularly the West Bank and Gaza. The Sub-Commission must seek to develop a creative approach to such situations.

36. The phenomenon of colonialism should be viewed not only in terms of redressing past wrongs but also in terms of the implacable covert violence inherent in the social and economic conditions imposed by the form of social and political organization known as capitalism. As a system, capitalism was genetically incapable of promoting human development and the enjoyment of human rights and fundamental freedoms. Its depredations were all the greater in the era of globalization and neo-liberalism.

37. Social concerns were neglected by Governments whose energies were absorbed by the task of paying off a constantly growing debt. The failure of the State to guarantee economic, social and cultural rights, such as the right to employment, health and education, and to protect fledging democracies would inevitably lead to social explosions.

38. Mr. PINHEIRO commended Mr. Alfonso Martínez on his plea for a more creative and imaginative approach to agenda item 2, particularly with reference to the Palestinian tragedy.

39. Mr. ALFONSO MARTÍNEZ said that ingenuity was required in dealing with all situations in which human rights and fundamental freedoms were being violated.

40. Ms. Hampson had argued at a previous meeting that the past could not be judged in the light of contemporary criteria, especially past acts that had not been unlawful when they were perpetrated. He had strong reservations about the primacy of the law under such circumstances, since it would inevitably result in historical impunity.

41. Mr. EIDE said he agreed with Mr. van Hoof that the Commission's instructions regarding agenda item 2, such as the request that proper attention should be given to the concerns of NGOs, were somewhat contradictory. However, he thought that the Sub-Commission's discussion of the item had been very profitable at the current session. The thematic approaches adopted, for example in connection with the issue of reparations in the context of colonialism

and slavery, had been creative and imaginative. The concept of historical impunity would repay further study, as would the forgotten conflicts mentioned by Ms. Hampson. Although he still thought that resolutions were desirable, the Sub-Commission should focus on thematic issues and develop a constructive approach to ensure that human rights violations were prevented rather than deplored.

42. Conflicts were interrelated and many of the issues raised under agenda item 2 involved religious intolerance and extremism, and the tendency of rulers to apply unduly harsh methods to situations that could be handled peacefully and constructively. Israel owed its creation to the Holocaust for which Europeans were largely responsible. It was intended to be a place where Jews could seek refuge from the tragedies that had befallen them in the past, especially in Europe. But the relationship between Israel and Palestine had generated a new conflict, which had been steadily escalating. The choice of means by both sides tended to exacerbate the situation and there seemed to be no way out of the crisis. The settlements in the occupied territories, which had been on the United Nations agenda for a very long time, constituted a clear-cut provocation to the Palestinians and led to increasing insecurity for both settlers and the people of Israel. The possibility of living in peace depended on reaching an accommodation, but there was little willingness in Israel to seek such an accommodation because of political processes. It was therefore up to the international community to address the problem and find a solution acceptable to both parties.

43. The situation in Kashmir was another perennial problem involving, on the one hand, religious extremism - often linked to the demand for self-determination - and, on the other, a tendency to overreact with excessively violent means. Self-determination was a lofty ideal. It had played an important role in the history of the United Nations during the process of decolonization and was still of great relevance, especially in occupied territories. On the other hand, it should be interpreted in the wider context of international law and international human rights law. Self-determination was often linked to ethnic exclusiveness, as in the former Yugoslavia and in Sri Lanka.

44. Some 20 years previously, he had criticized the Sri Lankan Government in the Sub-Commission for its inability to ensure the fair administration of justice and to provide security for the Tamil population in the wake of the 1983 killings. Subsequently, however, the Liberation Tigers of Tamil Eelam (LTTE) had perpetrated acts that could only be described as indiscriminate terrorism and that had affected civilians and individuals who could have served as bridge-builders. In such conflicts, both sides used means that escalated the human rights problems, drawing on absolutist terms such as self-determination without taking into account their full meaning under international human rights law. All the parties to a conflict - however just or unjust their cause - must comply with certain standards of humanity. The Sub-Commission had already brought that issue to the attention of the Commission on Human Rights but it had not yet been given the serious attention it deserved.

45. The CHAIRPERSON said that he and Mr. Preware, the Rapporteur, had prepared a summary of the discussion that had taken place among the members of the Sub-Commission at the previous meeting for distribution to the participants in the meeting of the Preparatory

Committee for the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance. The statements made at the current meeting would be added, if the document met with the approval of the Sub-Commission.

46. The debate on agenda item 2 would thus be reflected in three separate documents: a resolution to be drafted by the members, the summary records and the unofficial summary he had just referred to. As it was legally unclear whether the Sub-Commission could communicate with the Preparatory Committee without consulting its parent body, the Commission on Human Rights, it had been suggested that the Sub-Commission's views could be communicated through Mr. Pinheiro, who had been appointed to represent it at the World Conference.

47. Mrs. WARZAZI expressed support for that suggestion.

48. Mr. JOINET proposed that the resolution alone should be communicated to the Preparatory Committee. The summary records and the unofficial summary would reflect conflicting views. The resolution, on the other hand, would reflect the final consensus.

49. Mr. FAN Guoxiang said he thought that a record of the entire discussion, consisting of all three of the elements described by the Chairperson, should be communicated to the participants in the meeting of the Preparatory Committee and in the World Conference.

50. Mrs. DAES said that the Preparatory Committee was making rapid progress and the Sub-Commission should therefore submit its resolution within the next day or two. If the summary records were not distributed until the following week, very few delegations would take them into account. Nevertheless, the Sub-Commission had already made a contribution to the World Conference, because it had submitted documents to the Preparatory Committee with its views on certain items that were on the Conference agenda. The Working Group on Indigenous Peoples had already transmitted some information; a number of indigenous people would be participating in the Conference and an appeal had been made to their Governments to render that participation possible, while she would be representing the Working Group itself.

51. Mr. KARTASHKIN said that, on the previous day, Mr. Guissé had raised a very important point and it had been discussed in detail. Opinions had been expressed that could be used as a basis for a resolution. Nevertheless, however important the discussion, it would not attract much attention in Durban, even if the Sub-Commission submitted a summary of its work to the Commission on Human Rights. If the Sub-Commission wanted to make a contribution to the decisions of the World Conference on topics that it had debated, it must adopt a resolution; any other solution would have little effect in Durban. He would support the proposal, therefore, that the Sub-Committee start work immediately on a draft resolution, rather than continuing with its discussions.

52. Mr. PREWARE said that, following the extensive discussion the previous day, it had been agreed that a resolution should be prepared and several members of the Sub-Commission had been appointed to draft it. He questioned the need to submit a summary report of

discussions together with the resolution, and wondered whether its purpose would be to validate the position presented in the resolution or to bring out the different points of view on the issue, all of which should be considered in Durban. He agreed with Mr. Joinet that the resolution was the essential document and that it was unnecessary to add any other.

53. Mr. PARK said he agreed that the resolution was the essential means of ensuring that the opinion of the Sub-Commission received sufficient attention at the World Conference. It should thus be drafted without delay.

54. Mr. PINHEIRO said he was in favour of submitting a resolution to the Preparatory Committee as soon as possible. The Sub-Commission had, in fact, a historical opportunity to collaborate with the Preparatory Committee. Two of the Committee's groups were working on the Declaration and the Programme of Action, respectively, while a third group, under the leadership of Brazil, was working on questions related to slavery and colonialism and a fourth group, under the leadership of Mexico, was dealing with the victims of discrimination. The last two groups would have an interest in learning the Sub-Commission's positions on those issues. The resolution was the obvious means of communicating those positions.

55. Ms. ZERROUGUI said that the Sub-Commission should submit a document that represented the consensus of its members. It would weaken its position if it submitted a summary report or summary records that emphasized their differences.

56. Ms. HAMPSON said that the summary report should be distributed to the members of the Sub-Commission only and used as a background document for drafting the resolution. The resulting document should be submitted to the Preparatory Committee, rather than directly to the World Conference. However, the resolution should not be prepared in haste, because it should take all the different aspects into consideration and, ideally, it should be adopted unanimously rather than by consensus. It was also important that certain issues that were touched on only tangentially the day before should be included in the resolution.

57. Moreover, it appeared that the Preparatory Committee was facing grave difficulties and a risk that certain key States in the area of reparations would not attend the Conference. The resolution should recognize the position of certain groups within the Preparatory Committee and it would be advisable for the Sub-Commission to brief itself on the current situation. Therefore, it was advisable to devote more time to the preparation of the resolution which, perhaps, could be ready by noon on Monday, 6 August.

58. Mr. EIDE said that the summary report and summary records had different purposes: the first as an input to the resolution and the second for the benefit of the Sub-Commission's future deliberations. A number of matters had arisen during the previous meeting that required further discussion and those documents would provide a fundamental record for members.

59. Mrs. WARZAZI said she wished to make it clear that the subject raised by Mr. Guissé the previous afternoon arose from Sub-Commission decision 2000/114 entitled "Mass and flagrant violations of human rights which constitute crimes against humanity and which took

place during the colonial period, wars of conquest and slavery". It had come up at the Sub-Commission's previous session under the item on the administration of justice. However, in view of its subject matter, it was evident that the issue belonged under item 2 rather than item 3 of the current provisional agenda.

60. She agreed that the Sub-Commission needed to work on its resolution. She was not worried about the non-participation in the Conference of one or two States, since one of them had boycotted the 1978 and 1983 World Conferences and was thus merely continuing the same policy, which had not had a great effect on the events. She agreed that the summary records and the report would be useful at a later stage, particularly in preparing the introduction to the resolution.

61. Mr. ALFONSO MARTÍNEZ said he agreed with Ms. Hampson and Mr. Eide that there was no reason to prepare the final version of the resolution immediately. It was preferable to be prudent and to take all the available information into consideration. He had some very specific ideas about what could be done with regard to the points that were dividing his colleagues in the Preparatory Committee, but it was indispensable to obtain precise information. Submission of the summary records or report could confuse matters; the Sub-Commission should adopt a resolution that reflected a unanimous position.

62. Mr. GUISSÉ said that the document submitted to the Preparatory Committee should be a brief one that reflected the Sub-Commission's concerns with regard to slavery and colonization. The brief discussion the previous day was only the beginning of a long process of deliberation. The Sub-Commission could not reach a final decision immediately: it should prepare a unanimous opinion on the issues, expressed in the form of a resolution. It would have to look at the problem in greater detail in the future in the hope that the result would be a declaration or a convention, but a long process had to be carried through first of all in order to bring people to a consensus view.

63. Mr. SORABJEE, supported by Mr. EIDE, said that the summary records or report were for the benefit of the members of the Sub-Commission and should not be submitted to the Preparatory Committee. He emphasized that adequate time must be allocated to the drafting of the resolution, since it should be adopted unanimously in order to enhance its impact.

64. Mr. JOINET said that the resolution should be a brief one. The initial drafting group should consist of only two or three members of the Sub-Commission; once a preliminary document had been prepared, two or three other members could then review it, and then the revised version would be circulated to all the members.

Statements in exercise of the right of reply

65. Mr. LOUTFY (Observer for Egypt), responding to allegations by an NGO regarding the arrest of members of the Baha'i faith in his country, said that the Egyptian Constitution and legislation guaranteed freedom of religion for all. However, there was a fundamental difference between freedom of belief and involvement in illegal activities directed against Islam and action contrary to public order.

66. Law No. 263 of 1960 concerning the dissolution of all Baha'i lodges was not a violation of freedom of belief because the Constitutional Court of Egypt had confirmed its consistency with article 29 of the Universal Declaration of Human Rights, which provided that, in the exercise of his rights and freedoms, everyone should be subject only to such limitations as were determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

67. It could not be asserted that the Baha'i faith fully respected Islam, since the Egyptian police had arrested members of a Baha'i organization in January 2001 who were circulating publications that attacked the Islamic faith.

68. Mr. KAYA (Observer for Turkey) said that, to save the Sub-Commission's time, he would distribute a written response to Mrs. Daes' statement concerning Cyprus to all the members of the Sub-Commission.

The meeting rose at 1 p.m.

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SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 7th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 3 August 2001, at 10 a.m.

Chairperson: Mr. WEISSBRODT

later: Mr. PARK
(Vice-Chairperson)

later: Mr. WEISSBRODT
(Chairperson)

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ORGANIZATION OF WORK (continued)

ADMINISTRATION OF JUSTICE

The meeting was called to order at 10.05 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (item 2 of the provisional agenda) (continued) (E/CN.4/Sub.2/2001/3 and Add.1-3; E/CN.4/Sub.2/2001/NGO/1, 4, 7, 8, 10, 12, 14 and 15)

1. Mr. PARK said that, thanks to United Nations efforts to mainstream human rights in all its programmes and activities, human rights were becoming an integral part of the new international order. Few States dared any longer ignore the basic human rights of their citizens. Fascist and communist ideologies that had sought to justify the systematic and mass violation of human rights had been largely overcome, although human rights continued to be threatened by persistent poverty and bloody conflicts in many parts of the world.

2. He wished, however, to draw the Sub-Commission's attention to the plight of the hundreds of thousands of North Korean defectors who had sought refuge in the Russian Federation, Mongolia and north-east China. Despite the gravity of the human rights violations to which they were subjected, such people were denied refugee status, labelled "illegal trespassers" or "illegal economic migrants" and forcibly returned to a precarious situation.

3. The United Nations High Commissioner for Refugees (UNHCR), the States concerned and the international community as a whole must urgently devise some means of redress for the persons concerned. Many non-governmental organizations (NGOs) maintained that the principle of non-refoulement should be applied in the treatment of defectors in cases where the returnees risked harsh punishment. In that connection, it was most gratifying that, earlier in the year, an unprecedented 11.8 million South Koreans had signed a petition to the United Nations to request better treatment for North Korean defectors . It was vital that UNHCR be accorded access to such persons so that their status under international law could be determined.

4. The resurgence of revisionist tendencies in Asia was another issue requiring urgent attention. To the astonishment of the neighbouring States, the Government of Japan had recently authorized the use in schools of history textbooks that deliberately glossed over Japan's wartime aggression and omitted to mention the tragedy of the "comfort women" - a continuing affront to human dignity.

5. Mrs. DAES drew attention to the deleterious consequences for the health of the indigenous population of the Marshall Islands in the Pacific of a super-Power's illicit dumping on their land of toxic and other hazardous products and wastes.

6. In view of the increased incidence of such dumping in developing countries, which typically lacked the capacity to deal in an environmentally sound manner with the waste, the Sub-Commission should recommend the full implementation of the existing relevant international instruments and of the relevant Commission on Human Rights resolutions adopted at the recommendation of the Sub-Commission as well as close cooperation on the issue among

the competent bodies of the United Nations system. It should also call upon the Special Rapporteur of the Commission on Human Rights on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights to make concrete proposals concerning adequate measures to control, reduce and eradicate such inhuman practices.

7. She also wished to draw attention to the serious violations of human rights and fundamental freedoms that had occurred in Genoa surrounding the recent Group of Eight (G-8) Summit. The excessive security measures and restrictions enforced by the Government of Italy had clearly not been justified by the protection of public order and national interests. Indeed, the riot police had abused their powers, mistreating hundreds of demonstrators.

8. The deteriorating situation of human rights in Northern Ireland should also be addressed as a matter of concern, as should the grave and systematic violations of the human rights of prisoners in many parts of the world.

9. With regard to a written communication she had just received from the observer from Turkey, she wished to point out that the allegations concerning thousands of Greek mainlanders settled in Cyprus since 1963 and 30,000 Pontus Greeks from the Russian Federation were completely unfounded. She urged the Government of Turkey to respect the relevant rulings of the European Court. No State, after all, could consider itself above the law.

10. Mr. JOINET said that the Sub-Commission could boast of many achievements in respect of its action on country-specific situations under agenda item 2. As a direct result of relevant Sub-Commission resolutions - and of the personal engagement of its members - a highly constructive dialogue had finally been established with several (initially uncooperative or wary) Governments on highly sensitive issues, leading to extremely positive results.

11. It was thus that, in Togo, a commission had been established to investigate allegations of disappearances; the results, as noted by the United Nations High Commissioner for Human Rights, had been most constructive.

12. In Bahrain, as a direct result of the dialogue established with the Sub-Commission, the State Party had withdrawn its reservation to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Government in question had also been persuaded to cooperate with the Working Group on Arbitrary Detention, which had established a mechanism for ongoing dialogue between the Government and certain national NGOs then in exile. Subsequently, many prisoners had been liberated and a number of exiles had been permitted to return to their country, including one human rights defender who, as members would remember, had addressed the Sub-Commission while still in exile.

13. In Peru, also as a consequence of the dialogue initiated by the Sub-Commission on the basis of a country-specific draft resolution, an amnesty for perpetrators of grave human rights abuses had finally been lifted. The latter had acted as a catalyst for further positive developments. The fight against corruption had finally caused the finger to be pointed at the

former Head of State, to whom Japan had regrettably provided a refuge. One of the first actions of the new Government of Peru had been to recognize the competence of the Inter-American Court of Human Rights, as recommended by the Sub-Commission.

14. He was pleased also to announce that the Democratic People's Republic of Korea, after initially threatening to withdraw from the International Covenant on Civil and Political Rights, had finally been persuaded to cooperate with United Nations human rights machinery, and had just submitted its periodic report to the Human Rights Committee. Diplomatic relations had been established with a number of States and the country had begun to cooperate with a number of regional and international institutions.

15. The Commission should be made aware that all of the above achievements had been the direct or indirect consequence of the drafting by the Sub-Commission of country-specific resolutions.

16. Lastly, he wished to draw attention under agenda item 2 to three country situations that merited the Sub-Commission's attention. In Italy, the Government had evidently used excessive force in response to the demonstrations surrounding the G-8 Summit in Genoa. The raid on the school serving as the headquarters of the NGO Genoa Social Forum had been particularly deplorable. On a more positive note, a United Kingdom national allegedly beaten by Italian police was currently taking legal action and a parliamentary commission of inquiry into the events surrounding the Summit had been established.

17. In Tunisia, a magistrate had been suspended for expressing doubts concerning the independence of the judiciary, but the matter had been resolved thanks to a discussion he had himself held with representatives of the Tunisian Government in Paris.

18. In Israel, the extrajudicial executions of Palestinians constituted a grave and flagrant violation of international human rights law. Disproportionate measures used by the Israeli security forces against civilians included helicopters and tanks. It was deeply regrettable that a population that had suffered so much in the past should resort to such extremities.

19. Lastly, although he welcomed the fact that the governmental observers for India and Pakistan were making an evident effort to refrain from direct confrontation before the Sub-Commission, he found it shocking that certain NGOs were behaving as if they were governmental observers.

20. Mr. KIM Song-chol (Observer for the Democratic People's Republic of Korea), speaking in exercise of the right to reply, said that he was loathe to respond to the irresponsible and provocative remarks made by a fellow national. Mr. Park had, however, spoken rubbish, and his assertion that there was a "North Korean refugee problem" in China was pure fiction. A large number of Koreans lived in north-east China and people crossed the border each year - in both directions - to visit relatives. As for the few persons that had illegally crossed the border, all planned to return once economic conditions improved, and most had already returned voluntarily. The so-called "refugee problem" was a "foolish farce" orchestrated by hostile forces and intelligence agents who had kidnapped people in the north and lured them to the south with

the sole purpose of undermining north-south reconciliation and preventing the unification of the country. The Sub-Commission should help those innocent victims of brainwashing to return to their homeland.

ORGANIZATION OF WORK (item 1 of the provisional agenda) (continued)

21. The CHAIRPERSON drew attention to a proposal by the Bureau that the Social Forum should be discussed at two three-hour meetings on 13 August 2001. Following an introduction by Mr. Bengoa, the originator of the idea of a Social Forum, the first meeting would consist of a panel discussion. The following panellists had already agreed to participate: Mr. George Abi Saab, Ms. Hina Jilani, Mr. Andrew Clapham and Mr. Rubens Ricupero. Invitations had also been issued to Mr. Somavia of the International Labour Organization (ILO) and to representatives of the United Nations Development Programme (UNDP), the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO).

22. At the second meeting, the discussion would be thrown open to representatives of intergovernmental and non-governmental organizations and of Governments. The Special Rapporteur of the Commission on Human Rights on adequate housing as a component of the right to an adequate standard of living and representatives of the Committee on Economic, Social and Cultural Rights would also be invited to participate.

23. He took it that the Sub-Commission wished to adopt the procedure proposed by the Bureau.

24. It was so decided.

ADMINISTRATION OF JUSTICE (item 3 of the provisional agenda) (E/CN.4/Sub.2/2001/6 and 8 and Corr.1; E/CN.4/Sub.2/2001/NGO/5, 9 and 16; E/CN.4/Sub.2/2000/44; E/CN.4/2001/59 and Corr.1 and Add.1)

25. Mr. KASHMIRI (European Union of Public Relations) said he belonged to the part of the State of Jammu and Kashmir that was occupied by Pakistan, a country in which judges investigating corruption in high places were forced to resign. The judiciary was not independent; corruption, nepotism, solitary confinement, disappearances and murder were common. He had himself been deprived of his liberty and subjected to torture for having spearheaded the campaign for liberation from Pakistan and unification of the State of Jammu and Kashmir. He had been held in solitary confinement by the Pakistani security agencies for over eight months in 1998 and owed his release to NGOs such as Amnesty International and to the Sub-Commission.

26. During the elections held in July 2001, leaders of the mainstream Kashmiri political parties had been detained and prevented from reaching the polling areas. According to Amnesty International, over 100 people had been arbitrarily detained in Pakistani-occupied Jammu and Kashmir during the election period.

27. Leaders of the United Kashmir Peoples National Party, the Balwaristan National Front and other parties that were seeking to liberate the so-called "Northern Areas" (Gilgit-Baltistan) from Pakistan had been detained and the whereabouts of many of them was unknown.

28. Mr. MADELIN (International Federation for Human Rights) said he wished to stress the importance of the principle of universal jurisdiction, by virtue of which the perpetrators of crimes against humanity could be prosecuted anywhere, regardless of where the crimes had been committed and the nationality of the perpetrators or victims. If States were willing to act on that principle, persons accused of heinous crimes would no longer enjoy impunity. His organization thus welcomed the outcome of the proceedings in Belgium against Rwandans who had participated in the genocide in their country.

29. It deplored, on the other hand, the decision of the Senegalese Court of Cassation which had ended the proceedings against the former President of Chad, Hissène Habré, for what were obviously political reasons. However, the fact that he had been indicted, in response to an initiative by Chadian and Senegalese organizations of victims and human rights groups, meant that impunity in Africa was not inevitable and that the principle of universal jurisdiction could and should be applied in the countries of the South. The Sub-Commission should remind States that, according to the Preamble to the Rome Statute of the International Criminal Court, it was the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.

30. An international fact-finding committee sent by his organization to the United States in April 2001 had found that the defence in capital cases were denied essential guarantees of due process although the United States had recognized the right to a fair trial in the Sixth Amendment to the Constitution and in the International Covenant on Civil and Political Rights, which it had ratified in 1992.

31. The First World Congress Against the Death Penalty had brought together NGOs, jurists, politicians, journalists and former death-row inmates in Strasbourg, France, in June 2001. One month later, the European Parliament had urged the Council of Ministers to submit a resolution on the abolition of the death penalty to the next session of the United Nations General Assembly. He called on the Sub-Commission to support that initiative.

32. Many cases of arbitrary arrest and detention of politicians and students in Mauritania for reasons of public security had been documented by his organization and the Mauritanian Human Rights Association. The individuals concerned were often held in inhuman conditions and denied access to a lawyer.

33. In the Central African Republic, accused persons and convicted prisoners were being held in inhuman conditions in police stations and gendarmerie barracks since the closure of the prison in Bangui. Overcrowding had led to the release of "dangerous" prisoners, who thus enjoyed impunity, and to the development of popular justice, including summary executions. Following the attempted coup in May 2001, government forces and their allies had committed massive human rights violations, especially against members of the Yakoma ethnic group. A judicial commission of inquiry into the events was operating as a special court, playing the role of prosecutor and subjecting suspects to humiliating treatment.

34. A mission by his organization to Cameroon had brought to light abuses by the Operational Command set up in Douala to fight against crime. Many people had been arrested on the basis of unsubstantiated reports, summarily executed and their bodies burnt. A number of mass graves allegedly related to the activities of the Operational Command had been found the previous year. The Government had provided no credible explanation to date.

35. Lastly, he drew attention to the continued unlawful and arbitrary detention of two Buddhist religious teachers in Viet Nam notwithstanding decisions by the authorities to release them.

36. Mr. Park, Vice-Chairperson, took the Chair.

37. Ms. PARKER (International Educational Development, Inc.) said that many Governments sought to circumvent the provisions of humanitarian law by reclassifying armed conflicts as "terrorism and counter-terrorism". As a result, persons who should be afforded rights under humanitarian law were being held and tried under anti-terrorism laws. Turkey, for example, had not tried Abdullah Ocalan, the leader of the Kurdistan Workers Party (PKK), as a prisoner of war but as a terrorist charged with treason. The proceedings, which had been criticized by the European Court of Human Rights, had been void ab initio on account of the failure to bring valid charges.

38. The Indian authorities had also failed to apply humanitarian law in Indian-occupied Kashmir. Large numbers of Kashmiri detainees had been severely tortured or even killed in custody. To deflect international criticism, the authorities consistently referred to its victims as "Islamic terrorists". The Sub-Commission should insist on the need for all parties to the conflict to abide by humanitarian law.

39. Since the Chinese regime had made the practice of Falun Gong illegal in 1999, over 10,000 practitioners had been arrested and nearly 300 had died in custody. Torture was widespread and well documented. Her organization was working with Falun Gong practitioners to submit their cases to the relevant United Nations human rights bodies. A number of cases of deaths in custody had recently been reported to the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions. Further cases of torture, arbitrary arrest and violence against women would be documented. She urged the Sub-Commission to address the issue as one that clearly fell within its mandate.

40. Ms. WADHERA (Asian Centre for Organization Research and Development) said that people of different religions and faiths in India were governed by different sets of personal laws in respect of matters relating to personal and family affairs. However, they were also free to choose the common civil law on such matters.

41. The rights of women in India, particularly in the villages, had long been neglected but the situation had been rectified by an amendment to the Constitution that reserved one third of all seats in local authority elections for women.

42. Despite the reports of politically inspired human rights violations in areas of conflict such as Jammu and Kashmir, safeguards had been put in place in legislation, the courts and the

ministries to prevent and control such events. The National Human Rights Commission was a statutory body that monitored any civil rights violations by the central or State authorities and recommended measures to provide justice to all sectors of the population. Separate official bodies existed to look after the interests of different sub-sectors, such as scheduled castes and tribes, minorities and the disadvantaged, and the schools of minority religions were protected.

43. India also had independent and effective media and a strong NGO movement, which played a role in ensuring the administration of justice to minorities, the disadvantaged and women. Furthermore, under the democratic system, the Government was answerable to the people and their representatives in Parliament.

44. Countries should be given special incentives to put in place democratic structures and principles, including substantial development assistance financing; at the same time, there should be disincentives for those who trampled upon democratically-elected Governments and the Sub-Commission might consider setting up a working group to consider the issue.

45. Ms. SAITO (International Association of Democratic Lawyers) said she wished to draw the attention of the Sub-Commission to the issue of the war crimes committed by the Japanese pre-war imperial regime in its aggressions against other Asian countries. During the Asian-Pacific war, from 1931-1945, Japan had invaded north-eastern China and then advanced throughout the whole Asian-Pacific region perpetrating horrendous atrocities. There were also numerous war victims in the region during the Second World War.

46. She also wished to emphasize the plight of the victims of the 1925 Public Order Maintenance Law, which subjected those who were regarded as sympathizers of the anti-war struggle to arrest and imprisonment. After the surrender of the imperial regime in 1945, the Public Order Maintenance Law was abolished and those who had been detained under it regained their liberty and their civil and political rights.

47. In 1968, they had formed an association and, since 1974, had been petitioning both Houses of the Japanese Parliament for an official apology and compensation. The Governments of Germany and Italy had reflected on their wartime activities and provided compensation to victims and it was imperative that the Japanese Government should urgently apologize to and compensate victims of war crimes, in order to stimulate reflection and self-criticism about the war. Japan should also ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

48. Mr. LEBLANC (Franciscans International) called for an end to the death penalty, in particular in the United States. Since 1997, the United Nations Commission on Human Rights had adopted resolutions for a moratorium on the death penalty and, currently, 109 of the 185 Member States of the United Nations had called for an end to the death penalty or a moratorium on its practice.

49. Whereas, every year, more countries abolished the death penalty, there had been an increase in its use in the United States. There were 38 States that provided for the death penalty in law and over 3,700 prisoners had been under sentence of death in the United States as of 1 January 2001. As in other countries where the death penalty continued to exist, it was more

likely to be applied in a racist manner and to minorities and the disadvantaged in general; that was particularly heinous in the case of those suffering from mental retardation.

50. Since 1995, only three countries in the world were reported to have executed mentally retarded defendants: Japan, Kyrgyzstan and the United States. Following a visit to the United States in 1997, the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions had stated that the practice was contrary to international standards and called upon the authorities to put an end to it.

51. Research had failed to provide any scientific proof that executions had a greater deterrent effect than life imprisonment. His organization viewed the death penalty as perpetuating a cycle of violence and promoting a sense of vengeance; its continued use taught that violence and killing were acceptable ways of dealing with violence and killing. The healing of the victim, together with the reform and rehabilitation of the offender, should be the goal of a criminal justice system.

52. Franciscans International consequently supported the moratorium called for by the Pope in 1998, the call for the abolition of the death penalty by the United States bishops and the international initiative, Moratorium Now. It urged Governments to seek alternatives to the death penalty that reflected intelligence, civility, compassion and justice; and it called on all Governments to suspend the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

53. Mr. PANDITA (Interfaith International) said that voluntary observance of the tenets of religion decreased the likelihood of human rights violations and maximized the scope for the administration of justice. At the same time, politicizing religion not only debilitated its positive effects but also created tensions among groups of people who would, otherwise, live in peace and friendship. In theocratic States, religious minorities were prejudiced by an exclusionist legal system. At times, such States evolved parallel legal systems to cater to universal or international legislation; alongside the penal code structure, the tenets of the majority religion were enforced through religious courts and when the two systems collided, the State was often forced to succumb to extremist religious groups.

54. With regard to intergovernmental judicial cooperation, the Sub-Commission should consider the question of extradition treaties agreed to by all the States Members of the United Nations. Such treaties would reduce the frequency of crimes against humanity, since the administration of justice was obstructed when no legal action could be taken because an offender had fled to another country.

55. Ms. LE PENNEC (World Organization against Torture) said she welcomed the adoption by the Sub-Commission of a sub-item on racial discrimination in the administration of justice and wished to draw its attention to the persistence of certain policies and practices against a highly vulnerable group, namely, immigrants and asylum-seekers. Racism and racial discrimination affected such persons disproportionately, owing to a systematic lack of protection.

56. One example of discriminatory legislation was the situation of unaccompanied minors requesting asylum who were not admitted to French territory. Those who lacked the appropriate

documentation were retained in waiting zones under article 35.4 of the 1945 law on the entry and sojourn of foreigners, which allowed them to be held for up to 20 days. She questioned the legality of that detention in view of the provision of article 37 of the International Convention on the Rights of the Child that "the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time" and of the clarification by the Committee on the Rights of the Child that the provision included children seeking asylum and young refugees.

57. Moreover, in a recent decision, the French Court of Cassation appeared to have accepted that an unaccompanied foreign minor could be held in a waiting zone despite his lack of legal competence, even though that was a violation of a fundamental element of the protection of children: their lack of legal competence and the principle of equality before the law. She therefore urged the Sub-Commission to monitor the detention at the border of unaccompanied minors who were not allowed to enter the territory.

58. She also recalled the requirement that States must guarantee that asylum-seekers were held in special detention centres and not placed with those accused or convicted of criminal activities and drew the Sub-Commission's attention to the case of Australia, where asylum-seekers were held in internment centres for inordinate lengths of time in "shocking" conditions, according to members of that country's Parliament.

59. Official anti-racist policies should not hide the reality of policies of closing national frontiers to refugees and asylum-seekers. All too often, excessive and disproportionate force was used when turning away would-be immigrants.

60. Likewise, in the context of the campaign against racism, States should endeavour to remedy the growing institutionalization of racial discrimination within their penal systems and prison policies.

61. Mr. Weissbrodt resumed the Chair.

62. Mr. BHAN (Indian Council of Education) said that he was seeking justice for the people of Jammu and Kashmir. He was one of the hundreds of thousands of people who had been forcibly evicted from Kashmir and obliged to live in camps in Jammu, Delhi and elsewhere in India, while thousands of Kashmiris had been brutally massacred by the militarized pan-Islamists, who crossed the border from Pakistan. The military regime in Pakistan called them "freedom fighters", but they brought death and destruction to civil society and had contributed to the collapse of the administration of justice.

63. In Pakistani-occupied Kashmir there had been fraudulent elections recently, fraudulent because most of the mainline Kashmiri political parties had been barred from contesting and the majority of the electorate had been disqualified from voting. Although a moderate had led his Muslim Conference party to victory, the Pakistani Army had imposed a hardliner from another party as the head of the Government and a president was also being imposed by the military regime.

64. All the people of the State of Jammu and Kashmir looked to the Sub-Commission to reprimand Pakistan for its support of terrorism, which had destroyed the components of civil society, and sought support for rebuilding the social ethos of the area based on democracy, the rule of law, human rights and the administration of justice.

65. Ms. DANN (Indian Law Resource Centre) said that the Western Shoshones called upon the international community to put pressure on the United States to cease its discriminatory conduct against them. Several years previously, the United States Supreme Court had decided that the Federal Government was their trustee and could accept payment for their lands - lands that the Shoshones had never agreed to sell. Those lands were their life and they continued to live on them and maintain their cultural and economic survival through them. The Supreme Court had alleged that their lands had gradually been encroached on and settled by whites and others, but that was not true; only Western Shoshones lived on those lands. The Government was currently introducing the Western Shoshone Distribution bill which would automatically distribute the monies supposedly accepted by the Secretary of the Interior claiming to be the trustee of the Western Shoshone people but the Western Shoshones could not accept money for their mother earth, for their religious beliefs. It was a case of abuse of justice rather than administration of justice.

66. Mr. AJAAKIA (World Federation of Democratic Youth) said that, for many years, the Punjabi-dominated civil and military regimes in Pakistan had been committing gross human rights violations against the Mohajirs in urban Sindh. The administration continued to use methods such as extrajudicial killings, arbitrary detentions and enforced disappearances against the Mohajir population. It also denied adequate representation to Mohajirs in public office. Recently, a leading member of the Muttahida Qaumi Movement (MQM) had attempted suicide while in police custody, having been subjected to prolonged mental and physical torture. A number of other political activists had been arrested and tortured, or had disappeared altogether. The judicial system in Pakistan was manipulated by the military regime. He urged the Sub-Commission to call on the Government of Pakistan to end its policy of discrimination against the Mohajirs, and to carry out a population census for the purpose of enabling all the ethnic and linguistic groups to have an equitable share in the governance of the country.

67. Ms. BIONDI (International Confederation of Free Trade Unions) said that State-sponsored violence against trade union members was a common problem throughout the world. In Belarus, it was almost impossible for trade unions to carry out legitimate activities free of government interference. A recent Presidential Decree had virtually banned the organization of strikes, and declared all trade union meetings illegal during the run-up to the forthcoming presidential elections.

68. In Swaziland, a Decree issued on 22 June 2001 had exacerbated the repression of democratic and civil freedoms that had begun in 1973. The independence of the courts had also been eroded, since the King appointed judges at his own discretion. The General Secretary of the Swaziland Federation of Trade Unions had been forced to endure repeated threats and arbitrary detentions.

69. In South Korea, massive human rights violations linked to the administration of justice had occurred over the past year. Arrest warrants had been issued for the entire executives of

trade unions, many union members had been detained without trial, and the police had carried out violent attacks to prevent legitimate activities. She called for the immediate release of all imprisoned trade unionists in South Korea, for those responsible for unlawful assaults to be brought to justice, and for workers' rights to be re-established.

70. Mr. BEN MARZOUK (Young Doctors Without Frontiers Tunisia) said that the creation of the necessary conditions for sustainable growth and development was the key to promoting international human rights law. Trade liberalization must take into account the need to improve the welfare of societies, as well as the consolidation of international human rights instruments. International organizations should try to raise the profile of international law, among legal practitioners, in educational institutions and among the members of the general public.

71. The rule of law and the consolidation of democracy were essential preconditions for the enjoyment of human rights and fundamental freedoms. The right to freedom of expression did not include, however, the right to abuse the dignity of others and to ignore the supremacy of the law. The rule of law should be maintained by an independent judiciary, and democracy reinforced by a pluralistic debate, as well as a rich diversity of political parties and associations.

72. Ms. HAMPSON said that impunity was systematic and total for officers taking part in United Nations peacekeeping operations. All officers of the United Nations Civilian Police (CIVPOL) and military peacekeeping forces in the Balkans, East Timor and other areas were granted diplomatic immunity. If an officer was found to have been involved in criminal activities, the highest punishment that the United Nations could impose was dismissal and subsequent repatriation. The authorities in the officer's country of origin were under no obligation to follow that up with the appropriate criminal proceedings.

73. In Bosnia, several CIVPOL officers had been forced to resign after allegations of statutory rape, the facilitation of prostitution and acceptance of gifts from Bosnian officials. None of them had faced prosecution either in Bosnia or in their home country. In another case, in Kosovo, a CIVPOL officer accused of sexual relations with a 14 year-old mentally handicapped girl had escaped all criminal charges, despite the fact that the prosecutor's file had been sent to his country's permanent mission in New York. There was no mechanism for ensuring that States took the necessary legal action in such cases.

74. Military forces in Kosovo were also committing numerous violations of human rights law, including the expropriation of private property and the routine detention of minors with no guarantee of the right to a fair trial. Colonel Gross, chief of staff for the United States peacekeeping force in Kosovo, had admitted that many suspected members of Albanian nationalist groups were detained without adequate legal evidence, and deliberately denied the right to stand trial. In one case, a detainee had been severely beaten in the custody of peacekeeping officers, and had eventually "disappeared" in unusual circumstances. No legal remedy had been made available to his relatives. Moreover, the Ombudsman in Kosovo had been prohibited from investigating complaints against Kosovo Force (KFOR) officers.

75. She would like to know why no representatives of the International Committee of the Red Cross (ICRC) were visiting detainees in Kosovo. Where international civil servants had evidence of misconduct, they should be under an obligation to send detailed reports to the

Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia and to any relevant thematic rapporteurs. In a climate in which all legal responsibility was denied in Kosovo, it could not be left to individual victims or local lawyers to submit reports.

76. When it examined the reports of States whose forces took part in peacekeeping operations, the Human Rights Committee should address the problem as a matter of urgency. She called on the experts of the Sub-Commission to examine the issue of the effective accountability of peacekeeping forces and members of CIVPOL acting in the name of the international community.

77. Mr. JOINET, while agreeing that there appeared to be a lack of an effective mechanism to ensure the accountability of United Nations peacekeeping forces, said that Ms. Hampson had nevertheless simplified a very complex situation. She had addressed two separate issues: ordinary offences committed by CIVPOL or peacekeeping officers on one hand, and restrictions on fundamental freedoms in the context of efforts to restore order on the other. With regard to ordinary offences, officers had to take responsibility for their actions, although he did not believe that the instances referred to by Ms. Hampson constituted a widespread phenomenon.

78. In respect of the second issue he could speak from experience, since he had visited the Balkans and East Timor in the context of investigations for the Working Group on Arbitrary Detention, and say that a judicial void existed whenever a peacekeeping operation was undertaken. When criminals needed to be arrested in East Timor, peacekeeping officers had to act without respect for the right to due process, since the entire legal system of the country had collapsed. It was extremely difficult to organize an independent judicial system under such circumstances. In states of emergency, certain derogations from human rights instruments were sometimes necessary in order to restore democracy and the rule of law. While he fully agreed that a set of rules were needed to apply to transitional situations, the usual standards of civil and political rights were not always applicable.

79. Mr. EIDE said that there was an urgent need for rules and regulations applicable in peacekeeping operations. He urged that Ms. Hampson and Mr. Joinet be given the task of developing working papers on the issue.

80. Mr. GUISSÉ said that peacekeeping operations usually took place in countries where the justice system was no longer functioning. The United Nations had not, however, created a mechanism to provide justice, including possible compensation, for the victims of abuse. The experts of the Sub-Commission were the right people to address the issue of developing rules that would guarantee accountability.

The meeting rose at 1.05 p.m.

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SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 8th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 3 August 2001, at 3 p.m.

Chairman: Mr. WEISSBRODT

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ADMINISTRATION OF JUSTICE (continued)

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The meeting was called to order at 3 p.m.

ADMINISTRATION OF JUSTICE (agenda item 3) (continued) (E/CN.4/Sub.2/2001/6 and 8 and Corr.1; E/CN.4/Sub.2/2001/NGO/5, 9 and 16; E/CN.4/Sub.2/2000/44 and 59 and Corr.1 and Add.1)

1. Ms. BOWDEN (Liberation), speaking also on behalf of the Asian Buddhist Conference for Peace, mentioned several regions of the world where the administration of justice was a cause for concern.

2. The first such region was the Chittagong Hill Tracts, in Bangladesh, where fundamental elements of the peace accord signed in 1997 had not been implemented. The refugees who had returned to the region had still not been rehabilitated, the land confiscated from the indigenous people had not been returned to them, and the military camps had not been withdrawn. The last element in particular had created a climate of violence, since human rights abuses against the indigenous people were committed on a daily basis, not only by members of the armed forces but also by the police and Bengali settlers. The organizations she represented were calling for urgent implementation of the peace accord and the establishment of a mechanism to ensure that justice was restored in the region.

3. In Malaysia, the arbitrary detention of civilians was increasing and, according to more and more sources, those arrested were ill-treated and tortured. Human rights groups supported the calls of citizens for the repeal of the Internal Security Act, which the Government was using to justify the violations.

4. The human rights situation in Jammu and Kashmir would remain intolerable until the Indian Government recognized that the situation was critical. Since 1989, approximately 34,000 persons had been killed and the very people who administered justice were believed to be the perpetrators of massive human rights violations.

5. In the Moluccas, the escalating conflict between the Christian and Muslim communities was leading to growing violence. The Government should implement its stated policy of removing non-Moluccan members of the Laskar Jihad from the two provinces. It should also ensure that the armed forces and the police played a genuine peacekeeping role and refrained from taking sides in the conflict.

6. Lastly, both organizations were very concerned by the increasing level of violence in the Indian State of Assam, where the assassination and hostage-taking of innocent people were increasingly frequent, as were violations of their economic and social rights. In that region, corrupt officials and poor economic development had exacerbated demands for self-determination and secession, which had heightened the complexity of the conflict.

7. In all the regions mentioned, the international community must be vigilant in ensuring that the legislative and judicial systems were not used as a cover for massive and flagrant human rights violations.

8. Mr. PUNJABI (Himalayan Research and Cultural Foundation) said that in many countries, particularly in South Asia, State interference in the administration of justice, whether in the appointment of judges or even through the tenor of their verdicts, created a climate of uncertainty and repression that paralysed the judicial system. Recently, in one South Asian State, government authorities had ordered the court to pronounce a specific judgement in order to settle a political score against a former Prime Minister, and the judge concerned had been obliged to acquiesce. In many countries of the region, it was not only the State that was involved; non-State actors had even murdered witnesses, lawyers and judges, thus preventing any attempt at opposition to their will.

9. The Special Rapporteur on the independence of judges and lawyers had drawn attention to well-documented cases where justice had been violated in certain countries, particularly in South Asia, to no avail. The international community should do everything possible to ensure that the impact of the Commission on Human Rights in that area was more effective and lasting. It was also important that civil society, at the international level, should give greater attention to the issue of the independence of the judiciary.

10. There was also an urgent need to address the problem of the decline of democracy in many societies, including States that called themselves democratic. In such countries, the system of justice was seriously threatened by armed groups over which the State had no control or against which it hesitated to intervene. Consequently, those armed groups had enough coercive power to exert a disproportionate influence on local courts.

11. In conclusion, it was necessary to approach the issue of the administration of justice from all angles, and not merely from the perspective of the tension between the executive and the judiciary. It was also necessary to examine the factors that influenced the socio-political context in which the issues of justice and freedom were grounded.

12. Mr. GOONESEKERE said he was concerned by the fact that in several countries, including his own, there was a feeling that although crimes were punished, sanctions were inadequate and the investigation proceedings did not allow the guilt of the accused person to be established beyond all reasonable doubt. Above all, some people considered that the criminal system overprotected the accused. He cited the example of a judge of the Sri Lankan Supreme Court who had sentenced a murderer to 20 years' imprisonment. Having benefited from reductions in his sentence and been freed after six years in prison, the murderer had in turn been murdered by a group of individuals wanting to avenge the victim. What sentence should the judge pass on those individuals, in view of the fact that revenge was one of man's basic instincts? Based on that example, there was cause to wonder at the position of judges, who had both to apply the law and to ensure that the victims' families were not left with a sense of injustice.

13. It was very difficult to establish the guilt of an individual. In countries under the common law system, justice was based on the principle that it was preferable to leave someone unpunished than to convict an innocent person. In other words, people went unpunished, so long as any doubt remained about their guilt. A similar situation existed in the case of perpetrators of

human rights violations, because the same criminal legislation applied to ordinary citizens, police officers and members of the armed forces. When impunity occurred, the State was accused of being ineffective or the law was said to be inadequate. Should the system and the law then be changed? Should there be less concern for protecting the accused?

14. He was certainly fully opposed to the death penalty. He was thoroughly convinced that the State should not deliberately take the life of a human being. However, the question remained: what should be done with criminals who posed a danger to society? In what conditions should such dangerous individuals who were not subject to the death penalty be detained? How could maximum security be ensured in prisons and how could prisoners be protected against the pernicious influence of criminals? And what about the question of the protection of the human rights of those sentenced to life imprisonment? In the United States of America, one such prisoner had asked to be executed rather than spend his life in prison. In Sri Lanka, where the death penalty had not been legally abolished but was no longer applied, public opinion demanded that it should be re-established and practised. That was the case in other countries, as well.

15. Mr. KARTASHKIN challenged Mr. Goonesekere's remarks. It was true that countries that had abolished the death penalty were tending to reintroduce it, under the pressure of public opinion. However, it was not wise to systematically follow public opinion. Indeed, the danger of the death penalty, apart from its inhuman character, lay in the fact that the real perpetrator of a crime was often discovered after an innocent person had been executed. In his country, the Russian Federation, public opinion was also in favour of the death penalty. In fact, as it was already provided for in the Criminal Code, there was no need to re-establish it. However, the Head of State was strongly opposed to the death penalty and there were no executions, although he was not supported by the Russian Parliament. The latter had in fact refused to ratify Protocol No. 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms, the effect of which would have been to remove the death penalty from the Russian Criminal Code.

16. With regard to detention, he would be in favour of introducing in all countries the principle of habeas corpus, which consisted in remanding a suspect in custody only on the decision of a judge. The length of time a person could be held for questioning should also be limited, and should never exceed 48 hours; the same was true of detention during an investigation, because it was inconceivable that a suspect should be kept in police custody for months and even years. Consideration should therefore be given to formulating recommendations about time limits to be respected during criminal proceedings. Lastly, in order to make the judicial system more complete and ensure more effective protection of human rights, the institution of a human rights mediator, or Ombudsman, and the setting up of national human rights commissions, as had been done in the Russian Federation, should become widespread. The Ombudsman examined complaints only when all remedies had been exhausted, while the Commissions dealt with complaints in each region at any stage of the proceedings in the event of human rights violations.

17. The CHAIRMAN thanked Mr. Kartashkin for his statement and reminded him of the Sub-Commission's guidelines, according to which experts were advised not to refer to the situation in their own country.

18. Mr. ZIAUDDIN (Transnational Radical Party), speaking also on behalf of Ain O Salish Kendr, a non-governmental organization (NGO), said that history had an annoying tendency to repeat itself when nothing was done to repair wrongs that had been committed, as the situation in Afghanistan and Pakistan demonstrated.

19. Afghanistan was on the verge of collapse. The grave, systematic violations of human rights and international humanitarian law that were being committed there were well known, especially on account of the recent report submitted to the Commission on Human Rights by the Special Rapporteur on the situation of human rights in that country (E/CN.4/2001/43 and Add.1). In its resolution 2001/13, the Commission had strongly condemned those violations and had noted with alarm that the Taliban had resumed the conflict, which had resulted in the massive forced displacement of civilians and the indiscriminate destruction of their homes and agricultural lands, thereby eliminating their source of income. The Secretary-General of the United Nations had repeatedly expressed his concern about the situation and had invited the international community and human rights organizations to explore new approaches that would prevent further violations and put an end to the climate of impunity in Afghanistan. Ain O Salish Kendr called upon the Sub-Commission to establish a group of international experts to formulate recommendations to address the issue of impunity in Afghanistan.

20. Pakistan, whose situation was closely linked to that of Afghanistan, needed to deal with its past. The country was immersed in perpetual crisis and had remained unsure of its identity ever since the creation of Bangladesh in 1971 had destroyed its unity. That year, the Pakistani army had perpetrated a genocide during which 3 million people had died and 300,000 women had been raped. For many years, Bangladesh had demanded that the perpetrators of the 1971 genocide should be brought to justice. The man in the street in Pakistan had been completely unaware of the atrocities committed by his country's army until a commission of inquiry, whose findings had been leaked to the Indian press, had recommended that legal proceedings should be brought against high-ranking officers, not for the atrocities they had committed but for errors committed in the performance of their military duties.

21. Ain O Salish Kendr called upon the Pakistani Government to investigate the conduct of Pakistani soldiers in Bangladesh, render an account of the genocide perpetrated in that country and bring those responsible for those atrocities to justice.

22. Mr. KALIMBA (International Work Group for Indigenous Affairs) drew attention to the situation of the Batwa, who accounted for 0.4 per cent and 1 per cent of the populations of Rwanda and Burundi, respectively. The Batwa were completely excluded from political, economic, social and cultural affairs in those countries. In Burundi, no account had been taken of the Batwa in the Arusha peace agreement, and they would therefore have no access to positions of responsibility in the military or in the political system. In Rwanda, many Batwa had been killed in the civil war. Yet the international community had shown no concern for the problems of an indigenous people who might soon disappear from the face of the earth. Some Batwa had been accused of taking part in the massacres and were languishing in prison in Rwanda; there was no news of 2,300 Batwa who had been imprisoned in 1995 and 1996. His organization urged the Sub-Commission to send an expert to Burundi and Rwanda to investigate the situation of the Batwa and to put pressure on the Governments of both countries to change their attitude towards that group.

23. Mr. KHEMAKHEM (Observer for Tunisia) said that since 1987 Tunisia had been making tireless efforts to promote and strengthen human rights and fundamental freedoms as part of a global vision that reconciled economic and social development with the promotion of civil and political rights. The Tunisian authorities had established a comprehensive statutory and institutional framework to consolidate those objectives and to promote greater cohesion, harmony and solidarity within Tunisian society. Reforms had been launched with a view to promoting a culture of democracy, strengthening political pluralism and fostering the full enjoyment by all citizens of their inalienable and indivisible rights. A number of steps had been taken in that regard including the amendment of the Code of Criminal Procedure through a law providing for alternative sentencing and a law reducing the length of police custody; the passing of a law that set out a definition of torture consistent with international standards; the transfer of the prison administration from the Ministry of the Interior to the Ministry of Justice; the creation of the position of judge responsible for the enforcement of judgements; and the passing of a law on the organization of prisons which sought to improve the conditions of detention and facilitate prisoners' social rehabilitation. A number of cases of ill-treatment of detainees had recently come before the courts, resulting in punishments for those responsible and compensation for the victims. A bill on the expansion of the Supreme Council of Justice was under consideration.

24. With a strong commitment to the promotion and protection of indivisible human rights, Tunisia, while proud of its achievements, was aware of the distance it still had to go in order to realize its humanist and global vision of human rights.

25. Mr. DOLGOBORODOV (Observer for the Russian Federation) strongly protested against the inclusion of a paragraph in the report of the Office of the High Commissioner for Human Rights on the list of States that had proclaimed or continued a state of emergency (E/CN.4/Sub.2/2001/6) which read: "The President of the Republic of Chechnya declared a state of emergency with a 30-day duration that included a curfew to deal with an escalating military conflict". The inclusion of such a paragraph in an official United Nations document constituted a challenge to the territorial integrity of a sovereign State Member of the United Nations, in complete violation of the Charter. It was an attempt to legitimize the regime of the "Chechen President", who was subject to prosecution under the law of the Russian Federation. The delegation of the Russian Federation hoped that it was merely a question of carelessness on the part of the authors of the report and did not represent a political position adopted by the Office of the High Commissioner for Human Rights. He recalled that, under article 88 of the Constitution of the Russian Federation, only the President of the Federation had the right to declare a state of emergency on Federation territory, provided he informed the Federation Council and the Duma. It was unfortunate that the authors of the report had not checked their sources. If such an error was repeated, his delegation would be justified in considering it a deliberate act by bandits or members of separatist movements, with all the consequences that implied.

26. Mr. LEGGERI (Observer for Italy) said that at the time of the recent tragic events in Genoa, which the Sub-Commission had discussed, the vast majority of demonstrators had behaved peacefully. Unfortunately, there had been many groups whose sole aim had been to obstruct the Group of Eight (G8) Summit and provoke violent confrontations. Their behaviour had been inspired by urban guerrilla methods and had caused considerable damage in the city.

However, as the Head of State and the President of the Council had indicated, any member of the forces of law and order found guilty of violations would be punished. The Government had already taken a number of severe disciplinary measures involving the dismissal of several senior officials. Meanwhile, Parliament had decided to establish a bicameral commission of inquiry.

27. The Italian Government's firm stand in no way undermined the justification for the range of preventive measures that had been put in place to ensure law and order. It was extremely unfortunate that a peaceful movement for the defence of the poorest of the poor should have been discredited by violent groups within it who were determined to make every international meeting a scene of bloody confrontations. It was even more unfortunate because the attacks had occurred just when the G8 Summit had for the first time included combating poverty and pandemics and the attainment of sustainable development on its agenda.

Statements made in exercise of the right of reply

28. The CHAIRMAN invited any observers who wished to do so to exercise their right of reply.

29. Mr. OULD SIDI HAIBA (Observer for Mauritania) said that an NGO had stated that some people in Mauritania had been arbitrarily arrested, held incommunicado and prevented from consulting their lawyers or seeing their families. Those allegations were groundless, and the NGO appeared to have been misled with regard to trials that had taken place in two major cities, Kaédi and Ayoun. The trials had included public hearings of the parties, held in the presence of representatives of national and international jurists' associations and of the independent press. They were normal proceedings of ordinary law and the accused had been entitled to lawyers and to see their families.

30. Mr. AL-FAIHANI (Observer for Bahrain) said that Mr. Joinet had said, in a statement on Bahrain, that a number of political prisoners in that country had not been released. That was not correct; as a Reuter's press release dated 15 February 2001 had stated, all political prisoners had been released under an amnesty decreed following a referendum. Even the Bahrain Freedom Movement, an extremist political organization, had acknowledged that all persons detained as a threat to the security of the State had been released.

31. Mr. JOINET acknowledged his error and said that all political prisoners in Bahrain had been released.

32. Mr. Gil-Sou SHIN (Observer for the Republic of Korea), replying to the observer for the International Confederation of Free Trade Unions (ICFTU), said that his Government had taken major steps to strengthen the right to freedom of association. As part of that policy, the Government authorized all union activities, including peaceful demonstrations, provided that the relevant regulations were observed. Naturally, however, the political authorities were determined to prevent violent action, which was prohibited under the law.

33. The CHAIRMAN drew members' attention to the new version of the revised agenda that had been distributed to them in a document without a symbol, and in English only. It reproduced the revised agenda (E/CN.4/Sub.2/2001/1/Rev.1) and gave details of the issues to be considered under each agenda item. He suggested that the title of agenda item 5 (b) should be amended to refer specifically to the prevention of discrimination against indigenous peoples.

34. Mr. EIDE supported the Chairman's suggestion regarding agenda item 5 (b) and suggested that the same should apply to agenda item 5 (c).

35. The CHAIRMAN invited the Sub-Commission to retain the new version of the revised agenda, which seemed to him to be more explicit about the work to be done. If there were no objections, he would take it that the Sub-Commission wished to adopt the new version, as orally amended.

36. It was so decided.

37. Ms. HAMPSON, referring to the question of human rights in states of emergency, said that some countries had been under a state of emergency for a very long time. That was the case in Egypt, where a state of emergency had been declared in 1981, and in the Syrian Arab Republic, which had declared a state of emergency in 1963. She recalled that the declaration of a state of emergency did not automatically entail derogations from a country's obligations under international law. In that regard, she noted that the Human Rights Committee had just adopted, at its seventy-second session in July 2001, a general comment on article 4 of the International Covenant on Civil and Political Rights that was particularly valuable. The Human Rights Committee had concluded, among other things, that the rules of international humanitarian law were applicable during an armed conflict, whether the conflict was international in nature or not. She welcomed the Human Rights Committee's initiative and said she thought that the Committee might consider appointing a special rapporteur on the question or issue more frequent requests to States parties for special reports when they declared a state of emergency. The Commission of Human Rights, too, ought to deal more systematically with the question of the protection of human rights in states of emergency; a first step might be to consider the question of the protection of human rights in situations of armed conflict. It was unfortunate that the Commission did not have a mechanism for that purpose, in view of the particularly serious human rights violations that were committed during such conflicts.

38. Mrs. DAES thanked Ms. Hampson for having raised such an important point, and noted that she herself had prepared the first United Nations study on that topic. It would certainly be a good idea to stress the need to ensure that human rights were protected in states of emergency. In her opinion, however, the Commission should concern itself more with the question of human rights during armed conflicts. Some 65 armed conflicts were currently raging around the world, and the question of human rights violations in the States affected had not been sufficiently considered. She therefore suggested asking the Commission to consider that question in the future.

39. Mr. EIDE said that the statements made by NGO representatives under agenda items 2 and 3 had shown clearly that tension and armed conflicts always led to serious human rights violations. However, one NGO representative had stated that all actions motivated by the desire

for freedom were legitimate and that all repressive acts were illegitimate. He himself did not agree with that standpoint, which took no account of the methods or means used by the parties involved. It was important to look at the means employed, as had been shown by the demonstrations that had taken place during the G8 Summit in Genoa, Italy, in July 2001, which had resulted in the death of one of the participants. There was unfortunately no suitable mechanism for ensuring that the methods and means used in conflicts observed the principle of proportionality. There was often an escalation of violence on the part of all the participants, whether members of civil society or agents of the State. It might be a good idea for the Sub-Commission to give some thought, possibly at its next session, to the kind of mechanisms that could be established to ensure that the principle of proportionality was observed.

40. The CHAIRMAN suggested that the Sub-Commission should return to the question of human rights violations which constituted crimes against humanity and which had taken place during the period of slavery and colonialism. He drew attention to the draft resolution that had been distributed to all members of the Sub-Commission in a document issued without a symbol, in French and English only.

41. Mr. ALFONSO MARTÍNEZ pointed out that the draft resolution was not yet available in all the working languages of the Sub-Commission. If the Sub-Commission nevertheless decided to consider the text with a view to adoption on the basis of the French and English versions only, such a procedure should not be considered a precedent.

42. After an exchange of views in which Mr. KARTASHKIN, Mr. EIDE, Mr. JOINET, Ms. HAMPSON and the CHAIRMAN took part, the CHAIRMAN invited the members of the Sub-Commission to consider the draft resolution as part of a preliminary discussion designed to facilitate the discussion on the text that would take place at the next meeting.

43. Mr. GUISSÉ read out the following draft resolution:

> "Flagrant and massive violations of human rights which constitute crimes against humanity and which took place during the period of slavery, of colonialism and wars of conquest
>
> 1. The Sub-Commission on the Promotion and Protection of Human Rights, referring to its decision 2000/14, draws the attention of the international community to the cases of massive and flagrant violation of human rights which should be considered as crimes against humanity and which have, to date, benefited from impunity, in spite of the tragic suffering which slavery and colonialism have inflicted on numerous peoples in the world;
>
> 2. Considers that it is not possible to combat racism and racial discrimination, struggle against impunity or denounce the human rights violations which persist in the world without taking account of the deep wounds of the past;

3. Considers that, in the framework of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, it is necessary that the international community should consider the causes of those ills which, historically, have been brought about largely by slavery and colonialism;

4. Considers that the historic responsibility of the relevant Powers towards the peoples whom they colonize or reduce to slavery should be the subject of solemn and formal recognition;

5. Recalls that this responsibility is all the more well-founded since the periods of slavery and colonialism have brought about a state of economic collapse in the countries concerned, serious consequences in the social fabric and other tragedies which continue even today to affect entire peoples throughout the world;

6. Considers that the solemn and formal recognition of this historical responsibility towards the peoples concerned should include a concrete and material aspect such as rehabilitation of the dignity of the peoples affected, active cooperation in development, debt cancellation, technology transfers for the benefit of the peoples concerned and progressive restoration of cultural objects accompanied by the means to ensure their effective protection;

7. Considers that it is essential that the implementation of reparations should effectively benefit peoples - notably their most disadvantaged groups - with a view to realizing their economic, social and cultural rights;

8. Invites all the countries concerned to take initiatives which assist, notably through debate, in the raising of pubic awareness of the disastrous consequences of periods of slavery and colonialism;

9. Is convinced that such recognition and reparation will constitute the beginning of a process that will foster the institution of an indispensable dialogue between peoples for the achievement of a world of understanding, tolerance and peace;

10. Asks that a process of reflection should be initiated, in a concerted fashion, on appropriate procedures to permit the implementation of the present proposals;

11. Decades to continue its consideration of the question at its fifty-fourth session."

44. Mr. SIK YUEN suggested replacing the verb "invites" in paragraph 8, which he found somewhat weak, by "urges".

45. Mr. KARTASHKIN welcomed the draft resolution, whose merit was enhanced by the fact that its sponsors had clearly been confronted with numerous difficulties. That being the case, its presentation should perhaps be brought into line with United Nations practice by drawing a distinction between preambular and operative paragraphs.

46. Mr. FAN Guoxiang inquired about the meaning of the word "peoples" in paragraph 9. Was the idea to institute a dialogue between peoples who had been victims of slavery and colonialism and the States responsible for their suffering?

47. The CHAIRMAN suggested that a member of the Sub-Commission should record members' comments and observations so that a revised text could be submitted at the next meeting.

48. Mr. EIDE suggested that Ms. Hampson, who had a perfect command of English and French, should take on the task with Mr. Guissé's assistance.

49. Mr. GUISSÉ said that the reference in paragraph 9 to an indispensable dialogue "between peoples" was taken straight from the Charter of the United Nations, which used the term "peoples" almost invariably in preference to "States". The idea was, of course, to build peace between formerly colonized and colonizing countries. The sponsors had deliberately avoided the customary layout of a preamble followed by operative paragraphs since the text was not intended to serve a legal purpose but rather to present a set of ideas.

50. Mr. JOINET agreed that the words "between peoples" in paragraph 9 were somewhat ambiguous and proposed "peoples whom history has put in conflict" to clarify the meaning. In general, if the text as a whole was to have any impact, it should be presented, in his view, in the form of a declaration rather than a resolution. He therefore suggested inserting in paragraph 1, after the phrase "draws the attention of the international community" the words "by this declaration". He thought that the verb "invites" in paragraph 8 was well suited to a declaration.

51. Mr. SORABJEE noted that the idea of reparations was first mentioned in paragraph 7, although it was implicit in paragraph 6. He suggested that the two core ideas - recognition and reparation - should be clearly enunciated throughout the text. It was essential to specify which peoples were meant in paragraph 9.

52. Mr. PARK said he thought the wording of paragraph 1 should be improved because it was unclear whether the massive and flagrant violations of human rights should be or already were considered to be crimes against humanity. He wondered whether the "relevant Powers" in paragraph 4 were the same as the "countries concerned" in paragraph 8 and feared there might be some confusion with the "countries concerned" in paragraph 5. The English and French versions of paragraph 4 should be harmonized. He would prefer the word "urges" to "invites" in paragraph 8; the word "asks" in paragraph 10 was not strong enough and should be replaced by "requests". Lastly, he did not see the need for separate preambular and operative paragraphs.

53. Mrs. DAES proposed deleting the end of paragraph 1 after the word "impunity" because it contradicted the first part. She also thought that the idea of reparations should be clearly set forth in paragraph 6 and urged the sponsors to undertake a careful revision of the entire English version of the text.

54. Mr. EIDE suggested amending the title by adding the following opening words "Recognition of responsibility and reparation for". Moreover, the title of the French version omitted the words "wars of conquest"; they should be restored. The Tobin tax should be added to the list of reparations in paragraph 6. The word "permit" in paragraph 10 should be replaced by "enable".

55. Ms. HAMPSON, responding to comments, proposed using the original French version of the text wherever possible. Pointing out that the title was identical to that of Sub-Commission decision 2000/114, she asked whether there was a consensus in favour of adopting Mr. Eide's proposed amendment. She agreed with Mr. Joinet that the text should take the form of a declaration, which would give it greater weight and eliminate the need for a traditional layout in the form of preambular and operative paragraphs. With regard to paragraph 1, the Commission on Human Rights had already declared, at its fifty-sixth session, that the violations in question constituted crimes against humanity.

56. The term "the countries concerned" in paragraph 8, which was broader than "the relevant Powers" in paragraph 4, had been used because the initiatives contemplated could be taken by different actors. The sponsors had not wished to approach the question of reparations from a technical angle and had therefore simply provided examples of reparations in paragraph 6. In the light of the comments on that key point, she suggested amending the beginning of paragraph 7 to read: "Considers that it is essential that the implementation of the reparations mentioned in the preceding paragraph ...". With regard to the clarification of the words "between peoples" in paragraph 9, Mr. Joinet's suggestion raised problems because the words "whom history has put in conflict" was clumsy in English. Obviously, the peoples referred to throughout the text were those who had suffered massive human rights violations; on the other hand, paragraph 9 clearly referred to all peoples.

57. The suggestion that the word "invites" in paragraph 8 should be replaced by "urges" could complicate the task of choosing a verb in paragraph 10. In the same paragraph, she agreed that the word "enables" was preferable to "permits".

58. Mr. OLOKA-ONYANGO expressed support for the proposed amendment to the title. If the words "and reparation" were added at the end of paragraph 4, there would be no need to insert the words "mentioned in the preceding paragraph" in paragraph 7. While recognition did not necessarily imply regret or apologies, it should nevertheless be mentioned in paragraph 4. He proposed adding the words "and consequences" after "causes" in paragraph 3. In paragraph 7, the phrase following the second dash should be amended to read "with special attention being paid to the realization of their economic, social and cultural rights".

59. Ms. TERAO asked whether the word "ills" in paragraph 3 was strong enough. She suggested using a variant of the wording proposed by Mr. Joinet in paragraph 9 to clarify the meaning of the word "peoples".

60. Mr. JOINET expressed support for the idea of recasting the entire text in the form of a declaration, and for the suggestion to refer to "the causes and consequences" in paragraph 3, to make the idea of reparations explicit, to include the Tobin tax in the list of reparations and to amend the beginning of paragraph 8. He proposed the following wording: "Requests, on the occasion of the Durban Conference, that the countries concerned take initiatives ...".

61. Mr. OGURTSOV said he thought a resolution was preferable to a declaration, which was in no way binding. At all events, the text needed further study and its wording should be carefully revised to avoid any ambiguity. In particular, paragraph 8 should clarify the meaning of "all the countries concerned".

62. The CHAIRMAN said that the present discussion of the draft text was somewhat informal. The text would later be made available to observers.

63. Mr. JOINET said he thought that the preliminary version should not be distributed.

64. Ms. ZERROUGUI said that Mr. Joinet's proposal to refer to the Durban Conference in paragraph 8 was useful and merited attention.

65. Mrs. WARZAZI said that the sponsors had sought to draft a simple unambiguous text without innuendoes that could be adopted as quickly as possible. In her view, the text should not raise any problems.

The meeting rose at 6.05 p.m.

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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 9th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 6 August 2001, at 10 a.m.

Chairperson: Mr. WEISSBRODT

later: Mr. OGURTSOV
(Vice-Chairperson)

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (continued)

ADMINISTRATION OF JUSTICE (continued)

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The meeting was called to order at 10.05 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (item 2 of the provisional agenda) (continued)

1. The CHAIRPERSON referred the members of the Sub-Commission to the draft resolution on recognition of responsibility and reparation for massive and flagrant violations of human rights which had not, as yet, become an official document but the text of which was available.

2. After a procedural discussion, in which Mr. GUISSÉ, Mr. ALFONSO MARTÍNEZ and Mr. PINHEIRO took part, it was agreed that the document, as it currently stood, should not be distributed to persons other than the members of the Sub-Commission and that Ms. Hampson should read out the current text that the Sub-Commission was considering.

3. Ms. HAMPSON read out the following text of the draft resolution:

"Recognition of responsibility and reparation for massive and flagrant violations of human rights which constitute crimes against humanity and which took place during the period of slavery and colonialism.

The Sub-Commission on the Promotion and Protection of Human Rights,

Referring to its Decision 2000/114 and drawing the attention of the international community to the cases of massive and flagrant violations of human rights which must be considered as crimes against humanity and which have, to date, benefited from impunity, in spite of the tragic suffering which slavery and colonialism have inflicted on numerous peoples in the world,

Considering that it is not possible to combat racism and racial discrimination, struggle against impunity and denounce the human rights violations which persist in the world without taking account of the deep wounds of the past,

Considering that, in the framework of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, it is necessary that the international community should consider the causes and consequences of those ills which, historically, have been brought about by slavery and colonialism,

Considering also that the historic responsibility of the relevant powers towards the peoples whom they colonized or reduced to slavery should be the subject of solemn and formal recognition and reparation,

Recalling that this responsibility is all the more well-founded since the periods of slavery and colonialism have brought about a state of economic collapse in the countries concerned, serious consequences in the social fabric and other tragedies which continue even today to affect entire peoples throughout the world,

Considering that the solemn and formal recognition of this historic responsibility towards the peoples affected should include a concrete and material aspect such as rehabilitation of the dignity of the peoples affected, active cooperation in development not confined to existing measures of development assistance, debt cancellation, the payment of the Tobin tax, technology transfers for the benefit of the peoples concerned and the progressive restoration of cultural objects accompanied by the means to ensure their effective protection,

Considering that it is essential that the implementation of reparations should effectively benefit peoples, notably their most disadvantaged groups, with special attention being paid to the realization of their economic, social and cultural rights,

Convinced that such recognition and reparation will constitute the beginning of a process that will foster the institution of an indispensable dialogue between peoples whom history has put in conflict for the achievement of a world of understanding, tolerance and peace,

1. Requests all the countries concerned to take initiatives which would assist, notably through debate and the provision of accurate information, in the raising of public awareness of the disastrous consequences of periods of slavery and colonialism;

2. Requests that a process of reflection be initiated in a concerted fashion, on the appropriate procedures which would enable the guarantee of the implementation of the present proposals;

3. Decides to continue its consideration of the question at its fifty-fourth session."

4. She informed the participants that the English version was an unofficial translation of the original French text of the draft resolution.

5. Mr. EIDE said that he would prefer to retain the phrase "wars of conquest", which had been listed together with slavery and the colonial period in the title and the first and third preambular paragraphs of the original version of the text but was otherwise in agreement with the text as it stood.

6. Mrs. WARZAZI said that the intention had been to keep the text as simple as possible so that it would be acceptable to the Sub-Commission as a whole, thus enabling all the members to become sponsors of the draft resolution and, consequently, to adopt it unanimously.

7. Mr. JOINET said that, while he was not in agreement with everything in the text of the draft resolution, he had preferred not to introduce changes on the assumption that it would be

adopted by consensus. However, like Mr. Eide, he was in favour of retaining the words "wars of conquest" and also wished to introduce the word "largely" in the third preambular paragraph between the words "have been brought about" and "by slavery and colonialism".

8. Ms. HAMPSON, supported by Mrs. WARZAZI, said that the intention was to try and adopt the draft resolution unanimously, which would have a stronger impact than merely adopting it by consensus. She therefore thought that Mr. Joinet's suggestions should be incorporated so that he would be able to join the rest of the Sub-Commission in sponsoring the document.

9. The CHAIRPERSON asked the persons who wished to sponsor the draft resolution to raise their hands and observed that all the members of the Sub-Commission present, with the exception of Mr. Joinet, had done so. He recalled that, over the years, the Sub-Commission had done its utmost to adopt decisions unanimously; however, the rules merely stated that the Sub-Commission could adopt decisions without a vote and that was how the secretariat recorded such decisions, even if they were adopted unanimously. Lastly, he recalled that the resolution would be presented to the Preparatory Committee by Mr. Pinheiro, the Sub-Commission's representative to that body.

10. Mrs. WARZAZI said that it was most important that the secretariat should record unanimous decisions as such, and not merely as consensual decisions.

11. Mr. KARTASHKIN asked whether the Chairperson favoured adoption of the draft resolution by consensus or unanimously.

12. The CHAIRPERSON said that it was the practice of the Sub-Commission that the presiding officer did not take a position on such issues but remained neutral.

13. Mr. JOINET, referring to the third preambular paragraph, said it would be better to refer to ills brought about "largely" by slavery, colonialism and wars of conquest, since there were other causes of such ills, notably religious wars. In the sixth preambular paragraph, "peoples concerned" should replace "peoples affected" in the second line, and in the French text the words "de la taxe Tobin" should be substituted for the words "du taxe Tobin". In the French text of the last preambular paragraph, he would prefer the stronger wording "*Exprime* sa conviction" to the word "*Persuadée*". Paragraph 1, first and second lines, should read "... sur la base d'informations conformes à la vérité" ("... on the basis of accurate information").

14. He had already expressed his view that the text should take the form of a declaration, which would be more serious and would have a wider impact.

15. If his suggestions were adopted, he would probably be in a position to support a unanimous decision without a vote.

16. Mr. FAN GUOXIANG said he had no objection to the text as it stood, with some minor technical changes. He would be glad if such an important resolution could be adopted, whether unanimously or by consensus. However, he pointed out that further efforts were needed to achieve progress, since the question could not be solved overnight.

17. The CHAIRPERSON asked whether Mr. Guissé, as one of the main sponsors, was able to accept the amendments proposed by Mr. Joinet.

18. Mr. GUISSÉ said that Mr. Joinet had participated in the drafting of the text and could have put forward his proposals at an earlier stage. He himself did not think it would be appropriate to include any reference to religious wars.

19. Mr. JOINET said he had not in fact proposed the inclusion of such a reference.

20. Mr. ALFONSO MARTÍNEZ said he was very concerned that so many changes were being proposed at such a late stage when agreement had already been reached on the text following extensive consultations. He did not think it was proper for a single member of the Sub-Commission to assume the role of arbiter on the formulation of the text.

21. Mrs. WARZAZI appealed to the members of the Sub-Commission to show a spirit of solidarity and to arrive at a consensus on the draft resolution.

22. Ms. HAMPSON urged the Sub-Commission to avoid as far as possible the use of the word "consensus". It should try to ensure that it was able to adopt the draft resolution, either on the basis of general sponsorship or by a vote by a show of hands. She herself had no problem with any of the changes suggested by Mr. Joinet.

23. Mr. ALFONSO MARTÍNEZ, referring to the French text, said he would like to know the difference between "fidèles à la vérité" and "conformes à la vérité" in paragraph 1, and why Mr. Joinet was proposing that one formulation be adopted when the sponsors had already approved another.

24. Mr. JOINET said there was, in fact, no difference between the two formulations: he had proposed the amendment purely on stylistic grounds, and would be willing to withdraw it if necessary. It had been repeatedly stressed in the working group that the objective was to adopt the text by consensus: the situation was different if the objective was to be to adopt the text unanimously.

25. Subject to the Sub-Commission's acceptance of his only amendment of substance, namely, the addition of "and wars of conquest" after "colonialism" in the first preambular paragraph, he was prepared to make the transition from adoption by consensus to unanimous adoption.

26. The CHAIRPERSON said that Mr. Ogurtsov, Mr. Yimer and Mr. Bengoa wished to become sponsors of the draft resolution.

27. He took it that it was the wish of the Sub-Commission to accept Mr. Joinet's substantive amendment and to adopt the draft resolution, as amended, unanimously.

28. It was so decided.

ADMINISTRATION OF JUSTICE (item 3 of the provisional agenda) (continued) (E/CN.4/Sub.2/2001/6 and 8 and Corr.1; E/CN.4/Sub.2/2001/NGO/5, 9 and 16; E/CN.4/Sub.2/2000/44; E/CN.4/2001/59 and Corr.1 and Add.1)

29. Mr. MASOOD (International Human Rights Association of American Minorities) said that there was growing acceptance of universal jurisdiction in accordance with the provisions of the Rome Statute of the International Criminal Court, which had already been ratified by at least 30 States. As stated by the United Nations High Commissioner for Human Rights, human rights abuses such as genocide, crimes against humanity, war crimes and torture were widely considered to be subject to universal jurisdiction. An International Criminal Court exercising universal jurisdiction would make it possible to prosecute political and military figures who were responsible for systematic violations of basic human rights in situations of conflict and occupation, for example in Indian-occupied Jammu and Kashmir and in Palestine. National sovereignty could no longer serve as a guarantee of impunity. He noted, however, that some countries were reluctant to accede to the Rome Statute and were pressing for amendments to its provisions.

30. Ms. BANDETTINI di POGGIO (International League for the Rights and Liberation of Peoples) said that the state of emergency declared in Israel in 1948 had been repeatedly extended and was still in force. The Human Rights Committee, in its concluding observations on Israel's initial report, had recommended that the Government take steps to limit the scope and territorial applicability of the state of emergency and the associated derogation of rights. In the current conflict, the powerful Israeli armed forces and intelligence services were pitted against a civilian population that had been dispossessed of its rights and was fighting for survival with every means at its disposal. The question arose whether Israel, as the occupying Power, was justified in applying the state of emergency to the occupied territories. It was rather required, under the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and the two Additional Protocols to the Geneva Conventions, to protect the civilian population of the territories.

31. The state of emergency was invoked for the purpose of sealing off the occupied territories and erecting roadblocks. Pregnant women spent hours waiting at checkpoints in the blistering heat; one woman had died some weeks previously within sight of a Red Crescent mobile unit that was waiting on the other side of the checkpoint. Patients with chronic heart conditions had also died owing to lack of treatment. Red Crescent ambulances were often denied passage and exposed to gunfire in violation of the principle of neutrality of medical services. Such behaviour by the occupying Power was contrary to articles 16, 17, 18, 21 and 27 of the Fourth Geneva Convention.

32. Seven civilians had been killed some days previously in a "targeted" attack against alleged "criminals". As Ms. Hampson had noted, there were judicial procedures for bringing suspects to justice. Israel's so-called "active defence" policy posed a serious threat to the civilian population. Official killings had become such a routine event that people were becoming inured to their tragic implications. Mrs. Warzazi had drawn attention to the complicity of silence of powerful States, the use of the veto and attempts to muzzle those who spoke out against such practices.

33. Her organization urged the Sub-Commission, as an independent body, to bring a new sense of urgency to the debate with a view to ending the tragedy.

34. Ms. CHIN (Pax Romana) said that, in Japan, 17 different types of homicide were punishable by the death penalty. The distress suffered by persons sentenced to death was compounded by the fact that they were not informed of the date of their execution. Most of the 110 people currently under sentence of death had been awaiting execution for many years. Moreover, families were only informed of the execution of a relative after the event. Executioners also suffered considerable trauma and were denied proper psychological care. The Prison Law had not been amended since 1907. Her organization urged the Sub-Commission to continue its work on capital punishment, examining the question of psychological abuse of both prisoners and executioners, and to urge all countries that had not yet done so, including Japan, to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.

35. The Internal Security Act in Malaysia was used to detain individuals without trial. It had been enacted in 1960 to fight communist insurgents but had since become obsolete. A High Court judge, ruling on a recent case of unlawful detention, had urged Parliament to review the Act. A demonstration in support of six activists detained under the Act had been forcibly dispersed on 15 July 2001, 41 persons being arrested and charged with illegal assembly. There had also been reports of police brutality and acts of torture. According to the Government itself, 387 people had been killed in prison between October 1994 and October 1999.

36. The 1984 Printing Presses and Publications Act was used systematically by the Malaysian Government to muzzle the media. She referred in particular to a controversial takeover of two independent Chinese-language newspapers for alleged incitement of the Chinese community against the Government in a report on a by-election.

37. Her organization urged the Sub-Commission to call on the Government of Malaysia to ratify the United Nations human rights treaties which it had not yet ratified, especially the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

38. Mr. EGIDE (Pax Romana) said that a lawful and orderly approach should be adopted to the process of redressing the socio-economic imbalances created by colonial history in Zimbabwe, especially land reform. An issue of great concern was the loss of independence of the judiciary. A number of High Court judges, whose rulings had been ignored by government officials, had been harassed and forced to resign. A general amnesty had been granted for politically motivated crimes committed during the year 2000, encouraging impunity and the development of a culture of violence. Crimes committed by ruling party loyalists were ignored. In addition, freedom of expression was undermined by the expulsion of foreign journalists and harassment of local journalists who reported the Government's violations of human rights.

39. His organization welcomed the Sub-Commission's stand on the issue of recognition of past wrongs and reparations and urged the Preparatory Committee for the World Conference to take expedient corresponding action.

40. Mr. SAFI (International Islamic Federation of Student Organisations) said that, according to Amnesty International, a large number of "disappearances" documented in its 1993 report on

Jammu and Kashmir remained unresolved and the factors that had facilitated such disappearances were still in place. The recent discovery of a mass grave in a former army camp highlighted the urgency of the situation.

41. Referring to a horrific description of the Srebrenica massacre by a judge of the International Criminal Tribunal on the former Yugoslavia, he suggested that the Sub-Commission's working group on the administration of justice should include an item entitled "administration of justice in conflict areas" in its agenda. He echoed Ms. Hampson's admonition that situations of ongoing conflict were ripe territory for serious human rights violations such as extrajudicial executions and disappearances. The Sub-Commission had a particular responsibility to speak out in such situations.

42. Ms. ZERROUGI said that the working group on the administration of justice had asked her to prepare a working document on "discrimination in the criminal justice system". At least two studies on aspects of discrimination in the administration of justice had already been carried out by the Sub-Commission, one by Mr. Abu Rannat in 1967 (E/CN.4/Sub.2/1967/296) and the other by Mr. Chowdhury in 1982 (E/CN.4/Sub.2/1982/7).

43. Non-governmental organizations (NGOs) regularly reported cases of discrimination in criminal justice and the administration of justice. The reports of human rights treaty bodies and of the special rapporteurs of the Commission on Human Rights and the working documents for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance attested to the scale of the phenomenon throughout the world. Discrimination was common in courts, police stations, prisons and other places of detention and was directed mainly at vulnerable social groups, who were also frequently overrepresented in prisons and among the victims of human rights violations. They suffered discrimination on account of their foreign origin, gender, ethnic or religious background, age, disability, sexual orientation or poverty and, in many cases, on several grounds at once.

44. Discrimination was frequently institutionalized in legislation, rules of procedure, criminal policy and the organization and running of the police, the justice system and prisons. According to the Committee against Torture and the Special Rapporteur of the Commission on Human Rights on the question of torture, victims of discrimination also ran the greatest risk of being tortured and subjected to inhuman and degrading treatment in police stations, prisons and places of detention.

45. Vulnerable or deprived groups often suffered discrimination in terms of access to justice, legal assistance and, in the case of offenders, the right to social reintegration. Considerable resources were needed to ensure equality of treatment before the law and the lack of such resources led to flagrant disparities in the justice system and to corruption, especially in the prisons.

46. Women were the most vulnerable group. They tended to be underrepresented in the administration of justice and were, in some cases, denied access to certain offices. Their needs were not taken into account in criminal policy and they suffered on account of their weak social

status. Foreigners were also particularly vulnerable and their plight was deteriorating with the development of inter-State police and judicial cooperation, especially in the form of bilateral or regional agreements, often based on national preference.

47. She hoped that the World Conference would spell out the kind of action that should be taken to ensure effective protection for all vulnerable persons from de facto and de jure discriminatory practices.

48. Mr. EIDE said that discrimination in criminal justice was an extremely important subject and he was pleased to note that it had been placed on the agenda of the working group on the administration of justice.

49. Ms. MOTOC said she fully agreed with those speakers who had emphasized the importance of discrimination in the administration of justice. That issue should be taken up not only by the working group, but also by the full Sub-Commission.

50. The issue of justice in situations of transition had so far been only partially dealt with by the Sub-Commission. From the 1980s onwards, a number of States in Eastern Europe had been making the transition from an old regime to a new one, and were faced with problems as to how to establish the truth concerning the massive human rights violations that had occurred in the past. Following the same transition in Latin America, countries such as Argentina and Chile had set up committees to increase awareness of the crimes of the past and to bring about reconciliation. Subsequently, a number of African States had also established "truth and reconciliation" committees, the most celebrated being that of South Africa.

51. A number of problems arose in relation to justice in situations of transition. If truth and reconciliation committees could grant amnesty to those guilty of human rights violations, were such amnesties to be seen as supplementary to or as an alternative to judicial proceedings? Other problems concerned the composition of such committees, their procedures for interrogating witnesses and receiving depositions, and whether their reports should be made public. It was essential, in the case of regimes which had been involved in serious ethnic and racial conflicts, to try to establish general principles governing the operation of such committees.

52. Mr. Ogurtsov, Vice-Chairperson, took the Chair.

53. Mrs. DAES said she fully endorsed the recommendation in paragraph 43 of the working paper prepared by Ms. Zerrougui that a study on discrimination in the criminal justice system should be undertaken by a member of the Sub-Commission. Reliable reports indicated that the non-discrimination rule of the Standard Minimum Rules was not being applied to indigenous peoples in a number of countries. For instance, indigenous peoples frequently suffered ill-treatment during detention, and were often brought before the courts without being provided with interpretation and found guilty without knowing what crimes they were charged with.

54. Mr. EIDE said that the issues raised by Mrs. Daes were extremely important ones. Indigenous peoples often experienced particular problems in connection with the administration of justice, particularly when they were arrested or held in custody. He agreed that a full study on the topic should be carried out.

55. Mr. SHARIF (International Institute for Peace) said that the elected prime minister of Pakistan had become the victim of a military coup d'etat for attempting to save the South Asian region from the threat of nuclear war. The people of Pakistan had lost all faith in the democratic process after the fourth coup in 50 years. The military Government had begun to replace the existing model of democracy with institutions of its own design. He expressed solidarity with all the peoples in the world whose rights to self-determination and a democratic Government were being denied, and urged the international community to step up its efforts to put an end to tyranny for the sake of future generations.

56. Mr. ANDREU GUZMAN (International Commission of Jurists) said that his organization welcomed the decision by the working group on the administration of justice to make a study of the administration of justice by military courts. The facts showed that trials before military courts frequently led to injustices, the denial of basic rights and impunity. The study should address the following issues: the extent to which the right to a fair and impartial judgement and procedural guarantees prevailed in military courts; the trial of civilians by military courts; the trial by military courts of military and police officers for offences constituting human rights violations, and the question of military courts and conscientious objectors. The study should also identify the principles governing the competence, structure and functioning of military courts, taking into account their compatibility with international human rights law.

57. There was an abundant jurisprudence concerning military courts, including a report produced in 1969 by a Special Rapporteur of the Sub-Commission (E/CN.4/Sub.2/296), in which he concluded that it was debatable whether a military judge could be truly impartial, given that he was dependent on his superiors for his future career development. The trial of civilians by military courts had been found inconsistent with the right to a fair trial by both the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions and the Inter-American Commission on Human Rights. The Human Rights Committee took the view that the practice violated the guarantees provided by article 14 of the Covenant on Civil and Political Rights, and had issued a recommendation to Governments to prevent civilians from appearing before military courts.

58. There was still a need, however, for the jurisprudence on the issue to be properly systematized and disseminated. The administration of justice by military courts was an issue of crucial importance in guaranteeing the rule of law. His organization was working on a report concerning military courts, which would be completed by the end of 2001.

59. Mr. LITTMAN (Association for World Education) said that a specific case of arbitrary detention, that of Dr. Neseem Abdel Malek, clearly illustrated the injustice of legislation enforced in Egypt for the past 20 years, during what was described as a state of emergency. In May 2000, a further three-year extension had been applied to legislation providing for any civilian to be referred automatically to a military court by a presidential decision if the alleged crime was defined broadly as "an act of terrorism". In Opinion 10/1999 (E/CN.4/2000/4/Add.1), the Working Group on Arbitrary Detention had requested the Government of Egypt to review the case of Dr. Malek, a Coptic Christian, who had been condemned by a military court to 25 years' imprisonment without right of appeal. The prosecution had been based on allegations of bribery

made by a certified insane killer and Islamist terrorist, who had dedicated his life to a jihad against infidels. The Government of Egypt had responded to the pressure by reducing the doctor's sentence, for unspecified reasons, from 25 to 10 years.

60. His organization was calling for an immediate presidential pardon to be granted to Dr. Malek, on the grounds that he had not had a fair trial, and that bribery charges usually carried no more than a three-year prison sentence. He appealed to the German Government, nine of whose citizens had been brutally murdered in connection with the case, as well as to the members of the Sub-Commission, to add their voices to the plea for a presidential pardon.

61. Mr. KIM Yong Ho (Observer for the Democratic People's Republic of Korea) said that his delegation appreciated the efforts of the Sub-Commission to draw attention to the mass and flagrant violations of human rights that had taken place during the colonial period or in connection with wars of conquest and slavery. Colonialism and slavery were the root causes of continuing human rights violations, including those related to racial discrimination. Without the judgement and punishment of crimes against humanity committed in the past, it would be impossible to prevent the same crimes occurring in the future. Nevertheless, some countries continued to deny their criminal history by refusing to acknowledge legal and moral responsibility, distorting the teaching of historical events and refusing to provide compensation for the victims.

62. More than 200,000 Korean women had been used as military sex slaves, 6 million people had been used as forced labour, and 1 million innocent people had been massacred during 40 years of colonial rule. He urged Japan to accept responsibility for its actions, provide compensation and make an official apology.

63. The CHAIRPERSON said that the statement by the observer for the Democratic People's Republic of Korea had not been strictly connected with the administration of justice. He urged speakers to confine themselves to matters related to the agenda item under consideration.

Statements in exercise of the right of reply

64. Mr. HAMZAH (Observer for Malaysia), speaking in response to a joint statement by Liberation and the Asian Buddhist Conference for Peace and a statement by Pax Romana, said that his Government had introduced the Internal Security Act in order to preserve security and economic development in the face of subversive forces. His delegation had already made a statement in exercise of the right of reply on the same subject under agenda item 2, so he would not repeat the reasons for the detention of activists.

65. The Internal Security Act continued to be a useful instrument in a society in which extremist activities were widespread, and the Government had to take steps to protect its citizens. Any arrests were made on the basis of full police investigations and prisoners were neither tortured nor denied access to legal counsel. Malaysians were fully entitled to the freedoms of expression and assembly, provided that such activities took place in accordance with the law.

66. There was nothing controversial about the newspaper takeovers referred to by Pax Romana, which were motivated purely by commercial considerations. Lastly, his delegation rejected some of the figures mentioned by Pax Romana, which had not come from an authoritative source.

67. Mr. SHEN Yongxiang (Observer for China), speaking in response to a statement by International Educational Development Inc., said that the Falun Gong had caused the deaths of over 1,600 people, and led to the breakdown of numerous families, by its preaching of a pending doomsday. Any responsible Government had an obligation to prohibit organizations which constituted a threat to life and society. His Government had adopted a method of education and persuasion for most Falun Gong members, and had dealt with the dissenting minority in accordance with the law.

The meeting rose at 12.35 p.m.